

1 DAVID R. ZARO (BAR NO. 124334)  
2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)  
3 ALLEN MATKINS LECK GAMBLE  
4 MALLORY & NATSIS LLP  
5 865 South Figueroa Street, Suite 2800  
6 Los Angeles, California 90017-2543  
7 Phone: (213) 622-5555  
8 Fax: (213) 620-8816  
9 E-Mail: dzaro@allenmatkins.com  
10 tmcginity@allenmatkins.com  
11 jdelcastillo@allenmatkins.com

12 Attorneys for Court-appointed Receiver  
13 STEPHEN J. DONELL

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 SECURITIES AND EXCHANGE  
17 COMMISSION,  
18 Plaintiff,  
19 v.  
20 ROBERT YANG, et al.,  
21 Defendants,  
22 YANROB'S MEDICAL, INC., et al.,  
23 Relief Defendants.

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

NOTICE OF MOTION AND MOTION  
OF RECEIVER, STEPHEN J. DONELL,  
FOR ORDER APPROVING: (1) SALE  
OF LYNWOOD PROJECT;  
(2) OVERBID PROCEDURES; AND  
(3) REAL ESTATE BROKER'S  
COMMISSION; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF

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

Date: September 11, 2017  
Time: 1:30 p.m.  
Ctrm: 10A  
Judge: Hon. Stephen V. Wilson

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on September 11, 2017, at 1:30 p.m. in  
3 Courtroom 10A of the above-entitled Court, located at 350 W. 1st Street, Los  
4 Angeles, California 90012, Stephen J. Donell (the "Receiver"), the Court-appointed  
5 permanent receiver for Defendants Suncor Lynwood, LLC, Suncor Fontana, LLC,  
6 Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective  
7 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby  
8 does move the Court for an Order Approving: (1) Sale of the Lynwood Project;  
9 (2) Overbid Procedures; and (3) Real Estate Broker's Commission. Pursuant to the  
10 overbid procedures addressed herein, should an auction for the Receivership Entity  
11 asset commonly known as the "Lynwood Project" occur at the hearing on this  
12 Motion, the Receiver will further request the Court to approve the sale of the  
13 Lynwood Project to the highest bidder at the conclusion of the auction.

14 This Motion is based on this Notice of Motion and Motion, the attached  
15 Memorandum of Points and Authorities, the supporting Declaration of Stephen J.  
16 Donell, the documents and pleadings already on file in this action, and upon such  
17 further oral and documentary evidence as may be presented at the time of the  
18 hearing.

19 **This Motion is made following the conference of counsel pursuant to L.R.**  
20 **7-3, which was initiated on July 25, 2017.**

21 Dated: August 7, 2017

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

24 By:           /s/ Joshua A. del Castillo            
25 JOSHUA A. DEL CASTILLO  
26 Attorneys for Court-appointed  
Receiver STEPHEN J. DONELL

**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 .....6

II. RELEVANT FACTS .....7

    A. Background of Property .....7

    B. The Receiver's Marketing Efforts .....7

III. PURCHASE AND SALE AGREEMENT.....9

IV. PROPOSED OVERBID PROCEDURES.....10

V. BROKER’S COMMISSION.....11

VI. NOTICE OF THE PROPOSED SALE.....12

VII. ARGUMENT .....13

    A. The Sale Subject to Overbid Should Be Approved .....14

    B. Further Notices/Appraisals Should Be Waived .....16

    C. Additional Relief.....17

VIII. CONCLUSION .....17

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1

2

3

4 *Beet Growers Sugar Co. v. Columbia Trust Co.*,  
3 F.2d 755 (9th Cir. 1925)..... 14

5

6 *Blakely Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp.*,  
678 F. Supp. 154 (N.D. Tex. 1988)..... 15

7 *Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*,  
205 F.3d 1107 (9th Cir. 1999)..... 13

8

9 *First Nat'l Bank v. Shedd*,  
121 U.S. 74 (1887) ..... 14

10 *Gockstetter v. Williams*,  
9 F.2d 354 (9th Cir. 1925)..... 15

11

12 *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*,  
2012 U.S. Dist. LEXIS 157828 (M.D. La. 2012) ..... 16

13 *Miners' Bank of Wilkes-Barre v. Acker*,  
66 F.2d 850 (2d Cir. 1933)..... 14

14

15 *SEC v. American Capital Invest., Inc.*,  
98 F.3d 1133 (9th Cir. 1996), *cert. denied* 520 U.S. 1185..... 14

16 *SEC v. Capital Consultants, LLC*,  
397 F.3d 733 (9th Cir. 2005)..... 13

17

18 *SEC v. Elliott*  
953 F.2d 1560 (11th Cir. 1992)..... 13, 14

19 *SEC v. Hardy*,  
803 F.2d 1034 (9th Cir 1986)..... 13

20

21 *SEC v. Wencke*,  
622 F.2d 1363 (9th Cir. 1980)..... 13

22 *U.S. v. Heasley*,  
283 F.2d 422 (8th Cir. 1960)..... 16

23

24 *U.S. v. Little*,  
2008 U.S. Dist. LEXIS 93467 (E.D. Cal. 2008) ..... 16

25 *U.S. v. Peters*,  
777 F.2d 1294 (7th Cir. 1985)..... 16

26

**Statutes**

27

28 U.S.C. § 2001..... 16, 17

28

28 U.S.C. § 2001(a) ..... 16

	<u>Page(s)</u>
1	
2 28 U.S.C. § 2001(b).....	16
3 28 U.S.C. § 2002.....	17
4	
	<b><u>Rules</u></b>
5 Local Rule 66-7 .....	17
6	
	<b><u>Treatises</u></b>
7 2 Ralph Ewing Clark, <i>Treatise on Law &amp; Practice of Receivers</i> § 482 (3d ed. 1992).....	14
8	
9 2 Ralph Ewing Clark, <i>Treatise on Law &amp; Practice of Receivers</i> § 500 (3d ed. 1992).....	14
10 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 342 (3d ed. 1992).....	15
11	
12 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 344 (3d ed. 1992).....	15
13 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 482(a)	
14 (3d ed. 1992).....	15
15 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 487 (3d ed. 1992).....	14, 15
16	
17 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 489 (3d ed. 1992).....	15
18 2 Ralph Ewing Clark, <i>Treatise on Law and Practice of Receivers</i> § 491 (3d ed. 1992).....	15

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Pursuant to this Court's December 11, 2015 Preliminary Injunction, Order  
4 Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the  
5 "Appointment Order"), the Receiver has taken possession of and assumed authority  
6 and control over all assets of the Receivership Entities, including the real property  
7 and improvements located at 3599 Norton Avenue, Lynwood, California 90262 (aka  
8 3598 Martin Luther King, Jr. Boulevard, Lynwood, California 90262) (the  
9 "Lynwood Project" or the "Property")<sup>1</sup>. The Receiver moves this Court for an order  
10 authorizing him to sell the Lynwood Project, on the terms generally described below  
11 and more specifically in that Purchase and Sale Agreement and Joint Escrow  
12 Instructions, dated June 5, 2017 (the "PSA"). A true and correct copy of the PSA is  
13 attached as **Exhibit 1** to the concurrently filed Declaration of Stephen J. Donell  
14 ("Donell Declaration" or "Donell Decl.").

15 As permitted by the Appointment Order, the Receiver engaged Lee &  
16 Associates (the "Broker") as his real property broker for the purposes of marketing  
17 and selling the Lynwood Project. Since engaging the Broker, the Receiver and  
18 Broker have worked diligently to market the Property through commercially  
19 reasonable and customary channels, including, but not limited to, specifically  
20 targeting buyers reasonably believed to be interested or specializing in the purchase  
21 of real properties like the Property, which originally functioned as a skilled nursing  
22 facility and was apparently intended by the Defendants and the Receivership  
23 Entities to be developed as a so-called sub-acute care facility. As a result of  
24 extensive marketing efforts, the Receiver has secured a ready, willing and able  
25 buyer, INI Investment Corporation (the "Buyer"), and accepted an offer from Buyer  
26 to purchase the Property for Two Million One Hundred Ten Thousand and No/100

27  
28 \_\_\_\_\_  
<sup>1</sup> Parcel No. 6191-016-021.

1 Dollars (\$2,110,000.00) (the "Purchase Price"), on an "AS IS, WHERE IS" basis,  
2 subject to the PSA. The Buyer's offer is the highest and best offer received at the  
3 conclusion of widespread and focused marketing efforts, and after providing  
4 prospective purchasers with initial summaries of the Property, opportunities to tour  
5 the Property, and other information relevant to their diligence and purchase  
6 decisions.

7 Based upon the present facts and circumstances, and absent an overbid, the  
8 Receiver believes the Purchase Price is the best price attainable for the Lynwood  
9 Project and respectfully requests the Court grant this Motion and approve: (1) the  
10 sale of the Property (either to the Buyer or the successful overbidder) pursuant to the  
11 terms of the PSA; (2) the proposed overbid procedures described herein; and  
12 (3) payment of Broker's commission.

## 13 **II. RELEVANT FACTS.**

### 14 **A. Background of Property.**

15 Suncor Lynwood, LLC purchased the Property with funds raised from  
16 investors. (See Donell Decl. ¶3.) The Property includes a vacant structure  
17 previously used as a skilled nursing facility. (Id.) The Property was apparently  
18 intended to be re-developed as a so-called sub-acute care or skilled nursing facility.  
19 (Id.) A Broker's Opinion of Value ("BOV") obtained by the Receiver indicates that  
20 the Property has a value in the range of \$1.5 million and \$2 million. Id. at ¶ 4.) As  
21 of the date of this Motion, the Broker has received a total of 14 arms-length offers to  
22 purchase the Property. Buyer's offer reflects the highest and best offer received to  
23 date and is expected to net approximately \$1.5 million for the estate of the  
24 Receivership Entities, after the payment of outstanding property taxes, commission,  
25 and other fees. (Id. at ¶ 5.)

### 26 **B. The Receiver's Marketing Efforts.**

27 The Receiver, his staff, and the Broker have diligently marketed the Property  
28 through commercially reasonable and customary channels and successfully

1 generated a significant amount of interest in the Property through their efforts.  
2 Specifically, since the Broker was engaged, he has developed and undertaken a  
3 marketing campaign for the Property that, while widespread, was also focused on  
4 ensuring that the Property was offered to prospective buyers in the specific markets  
5 where the Property would likely be most valued. To that end, the Receiver and the  
6 Broker:

- 7 • Prepared and uploaded marketing materials to the Lee & Associates  
8 website;
- 9 • Presented the Property for sale to appropriate agents at bi-monthly  
10 meetings;
- 11 • Developed a unique database of approximately five-hundred (500)  
12 potential buyers and real property investors with a demonstrated  
13 interest in assets similar to the Lynwood Project;
- 14 • Delivered targeted marketing materials to owners and developers of  
15 skilled nursing and sub-acute care facilities, and delivered hard copies  
16 of these materials to all interested brokers and principals;
- 17 • Uploaded marketing materials developed specifically for the Lynwood  
18 project to a number of third party websites regularly used to advertise  
19 similar properties, including "Loopnet," "Xceligent," "AIR," and  
20 "Costar."

21 (Donell Decl. ¶ 6.)

22 In addition to the above, the Receiver assembled relevant materials and  
23 populated a virtual "data room" containing all of those records he has recovered that  
24 he believed would be relevant to prospective purchasers of the Property for due  
25 diligence purposes<sup>2</sup>, and offered to provide access to all comers after securing  
26 customary non-disclosure agreements. (Id. at ¶ 7.)

27 \_\_\_\_\_  
28 <sup>2</sup> Even though this is an "As Is-Where Is" sale, the Receiver populated the virtual  
data room with a significant amount of due diligence materials relating to the



1 As noted above, and as a result the above-described marketing and sale  
2 efforts, the Receiver received 14 offers to purchase the Property. After due  
3 diligence and negotiations among the offerors, several parties each submitted their  
4 highest and best offers. (Donell Decl. ¶ 5.) Buyer's offer was the highest and best  
5 qualified offer received and the Receiver accepted its offer, subject to performance  
6 of the requirements in the PSA and Court approval. (Id., Ex. 1.) Other parties have  
7 expressed interest in participating in the overbid process. (Id.)

8 **III. PURCHASE AND SALE AGREEMENT**

9 A copy of the PSA for the sale to Buyer is attached as **Exhibit 1** to the Donell  
10 Declaration. Its terms are summarized as follows:<sup>3</sup>

11 **Court Approval.** All aspects of the Purchase and Sale Agreement and the  
12 sale are subject to approval by the Court.

13 **Purchase Price.** \$2,110,000. The estimated net proceeds to the receivership  
14 estate after payment of the proposed total broker commission of 5% of the Purchase  
15 Price, plus escrow tax proration and other costs, will be approximately \$1.5 million.

16 **Closing Date.** The closing of the sale of the Property shall occur thirty (30)  
17 days after the Court approves the Sale Motion.

18 **Deposit.** Buyer has deposited \$210,000.00 (the "Deposit") into Escrow. This  
19 reflects a non-refundable deposit to be applied to the Purchase Price, subject to the  
20 overbid procedures and other terms set forth in the PSA.

21 **As Is/Where Is Purchase.** Buyer agrees to purchase the Property on an "AS-  
22 IS, WHERE-IS" basis, with no representations or warranties made by the Receiver,  
23 his professionals, or the Receivership Entities.

24  
25  
26 Lynwood Project in order to permit prospective buyers as comprehensive an  
27 <sup>3</sup> understanding of the Property as possible. (Donell Decl. ¶ \_\_\_\_.)  
28 The terms of the Purchase and Sale Agreement are summarized herein for  
convenience only. In the event of any conflict between the Purchase and Sale  
Agreement and the summary provided herein or any ambiguity as to the language  
used herein, the Purchase and Agreement shall govern and control.

1           **Buyer's Representations and Warranties.** Buyer represents and warrants  
2 that it is qualified and capable of closing the purchase and sale transaction.

3           **Overbid Procedures.** The sale is subject to the proposed overbid procedures  
4 detailed in the PSA and Section IV below. Pursuant to these procedures, if Buyer is  
5 not the highest qualified bidder at the auction, its Deposit will be returned.

6 **IV. PROPOSED OVERBID PROCEDURES**

7           The Receiver requests that the following overbid procedures be approved:

8           (a) **Qualified Bidders.** All those appearing to bid at the auction must be  
9 Qualified Bidders as described herein. A Qualified Bidder is a prospective  
10 purchaser who: (i) provides a fully executed purchase and sale agreement for the  
11 Property in a form substantially similar to the Purchase and Sale Agreement; and  
12 (ii) provides an earnest money deposit by wire transfer or cashier's check in the  
13 amount of 10% of the Purchase Price payable to the Receiver, which amount shall  
14 be non-refundable to the Qualified Bidder with the highest and best bid at the  
15 auction if for any reason (a) the highest and best bidder fails to timely close the sale  
16 or (b) the highest and best bidder fails to provide the balance of the purchase price to  
17 the Receiver one day prior to the Closing Date. Buyer is a Qualified Bidder. Each  
18 Qualified Bidder must provide the above-described executed PSA and earnest  
19 money deposit to the Receiver no later than 7 business days before the hearing date  
20 on the instant motion.

21           (b) **The Auction Process.** Qualified Bidders shall appear at the  
22 hearing/auction in person, or through a duly authorized representative. At that  
23 hearing, the Court, or at the Court's request, the Receiver, will conduct an auction of  
24 the Property among any Qualified Bidders. The highest and best bidder's deposit  
25 shall be applied to the purchase price, if the sale is approved by the Court. The  
26 initial overbid shall be no less than one hundred and one percent (101%) of the  
27 Purchase Price, or at least \$2,131,100.00 ("Initial Overbid"). Subsequent overbids  
28 shall be in increments of at least \$10,000.00. If no Qualified Bidder submits a bid in

1 the amount of the Initial Overbid or higher, the PSA will be submitted to the Court  
2 for approval in its current form. The Court may reject any and all bids following  
3 conclusion of the auction.

4 (c) **Due Diligence.** All prospective bidders shall have had the opportunity to  
5 inspect the Property and any documentation relating thereto prior to the auction.

6 (d) **No Contingencies.** The sale to any Qualified Bidder shall not be subject  
7 to any contingencies, including without limitation, for financing, due diligence or  
8 inspection.

9 (e) **As Is/Where Is Purchase.** The sale to any Qualified Bidder shall be on  
10 an "AS-IS, WHERE-IS" basis as described in the Purchase and Sale Agreement.

11 These procedures were formulated by the Receiver with the goal of obtaining  
12 the highest and best price for the Property, thus ensuring a maximum return to the  
13 receivership estate.

14 **V. BROKER'S COMMISSION**

15 By separate agreement, the Receiver has agreed, subject to Court approval, to  
16 pay Broker and Bestway Realty a total commission of 5% of the final purchase  
17 price. (Donell Decl. ¶ 8.) Pursuant to that agreement, Broker shall be solely  
18 responsible for and will compensate cooperating and referring brokers, and thus will  
19 split the commission as appropriate. (Id.) Based on the Receiver's extensive  
20 experience in real estate transactions, the amount of the commission is commercially  
21 reasonable, and was fully negotiated by the Receiver after reviewing proposals from  
22 five other qualified brokers. (Id.)

23 As explained above, since its engagement, the Broker has invested substantial  
24 time in assisting the Receiver with the preparation of marketing materials for the  
25 Property, locating potential purchasers, marketing the Property to them, and  
26 negotiating terms. In addition, since the PSA with Buyer was signed, the Broker has  
27 continued to market the Property and provide notice of the opportunity to overbid in  
28 an effort to promote active overbidding at the auction. Based on the Receiver's

1 extensive experience in real estate transactions, and in light of the challenges  
2 presented, the amount of the commission to the Broker represents commercially  
3 reasonable compensation for the work required in order to secure a serious buyer  
4 and prospective overbidders for the Property.

5 **VI. NOTICE OF THE PROPOSED SALE**

6 The Receiver's counsel is concurrently serving this Motion by mail on all  
7 parties to the action who do not already receive electronic service, and by electronic  
8 means on all known parties with potential interest in purchasing the Property. The  
9 Receiver is also posting a copy of this Motion on the receivership website,  
10 www.fedreceiver.com, accompanied by the following notice of the proposed sale  
11 and the opportunity to overbid at the hearing:

12 In the action pending in U.S. District Court for the Central  
13 District of California, Case No. CV-02387-SVW(KKx),  
14 SEC v. Robert Yang, et al., notice is hereby given that the  
15 court-appointed Receiver has contracted to sell the real  
16 property located at 3599 Norton Avenue, (aka-3598  
17 Martin Luther King, Jr. Boulevard), Lynwood, California  
18 along with the related facilities and personal property  
19 commonly known as the Lynwood Project for the amount  
20 of \$2,110,000.00. Sale is subject to overbid and Court  
21 confirmation. The hearing is set for September 11, 2017  
22 at 1:30 p.m., courtroom of the Honorable Stephen V.  
23 Wilson( courtroom 10A), United States Courthouse, 350  
24 W. 1st Street, Los Angeles, California 90012. The  
25 minimum initial overbid is \$2,131,100.00. Subsequent  
26 overbids shall be in increments of at least \$10,000.00. A  
27 fully executed purchase and sale agreement in a form  
28 acceptable to the Receiver and an earnest money deposit  
in an amount equal to ten percent (10%) of the purchase  
price must be received by 5:00 p.m. Pacific Standard  
Time, at least 7 business days before the scheduled  
hearing, by the Receiver at FedReceiver, Inc., c/o Stephen  
J. Donell, CCIM, CPM, 12121 Wilshire Blvd., Suite 1120,  
Los Angeles, CA 90025, in order to be considered. In  
addition, to be considered a qualified bidder, a prospective  
purchaser must abide by the overbid procedures as set

1           forth in the sale motion, a copy of which is available on  
2           this website. If interested in submitting an overbid, please  
3           contact the Broker, Matthew Sullivan, Lee & Associates,  
4           at 213-623-0800 or at [matthew.sullivan@lee-  
5           associates.com](mailto:matthew.sullivan@lee-associates.com) for the form of Purchase and Sale  
6           Agreement and other information.

## 7           **VII. ARGUMENT**

8           "The power of a district court to impose a receivership or grant other forms of  
9           ancillary relief does not in the first instance depend on a statutory grant of power  
10          from the securities laws. Rather, the authority derives from the inherent power of a  
11          court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369  
12          (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
13          and efficient administration of the estate by the district court for the benefit of  
14          creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
15          of a receiver is authorized by the broad equitable powers of the court, any  
16          distribution of assets must also be done equitably and fairly. See SEC v. Elliott,  
17          953 F.2d 1560, 1569 (11th Cir. 1992).

18          District courts have the broad power of a court of equity to determine the  
19          appropriate action in the administration and supervision of an equity receivership.  
20          See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
21          Circuit explained:

22                   A district court's power to supervise an equity  
23                   receivership and to determine the appropriate action to be  
24                   taken in the administration of the receivership is extremely  
25                   broad. The district court has broad powers and wide  
26                   discretion to determine the appropriate relief in an equity  
27                   receivership. The basis for this broad deference to the  
28                   district court's supervisory role in equity receiverships  
                  arises out of the fact that most receiverships involve  
                  multiple parties and complex transactions. A district  
                  court's decision concerning the supervision of an equitable  
                  receivership is reviewed for abuse of discretion.

Id. (citations omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107, 1115  
                  (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,

1 and 'we generally uphold reasonable procedures instituted by the district court that  
2 serve th[e] purpose' of orderly and efficient administration of the receivership for  
3 the benefit of creditors.").

4 Accordingly, this Court has broad equitable powers and discretion in  
5 formulating procedures, schedules and guidelines for administration of the  
6 receivership estate and disposition of receivership assets.

7 **A. The Sale Subject to Overbid Should Be Approved**

8 It is generally conceded that a court of equity having custody and control of  
9 property has power to order a sale of the same in its discretion. See, e.g., Elliott,  
10 953 F.2d at 1566 (11th Cir. 1992) (finding that the District Court has broad powers  
11 and wide discretion to determine relief in an equity receivership). "The power of  
12 sale necessarily follows the power to take possession and control of and to preserve  
13 property." See also SEC v. Am. Capital Invest., Inc., 98 F.3d 1133, 1144 (9th Cir.  
14 1996), cert. denied 520 U.S. 1185 (decision abrogated on other grounds) (citing  
15 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
16 (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity  
17 orders property in its custody to be sold, the court itself as vendor confirms the title  
18 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers  
19 § 487).

20 "A court of equity, under proper circumstances, has the power to order a  
21 receiver to sell property free and clear of all encumbrances." Miners' Bank of  
22 Wilkes-Barre v. Acker, 66 F.2d 850, 853 (2d Cir. 1933). See also, 2 Ralph Ewing  
23 Clark, Treatise on Law & Practice of Receivers § 500. To that end, a federal court  
24 is not limited or deprived of any of its equity powers by state statute. Beet Growers  
25 Sugar Co. v. Columbia Trust Co., 3 F.2d 755, 757 (9th Cir. 1925) (state statute  
26 allowing time to redeem property after a foreclosure sale not applicable in a  
27 receivership sale).

28

1 Generally, when a court-appointed receiver is involved, the receiver, as agent  
2 for the court, should conduct the sale of the receivership property. Blakely Airport  
3 Joint Venture II v. Fed. Sav. and Loan Ins. Corp., 678 F. Supp. 154, 156 (N.D. Tex.  
4 1988). A receiver's sale conveys "good" equitable title enforced by an injunction  
5 against the owner and against parties to the suit. See 2 Ralph Ewing Clark, Treatise  
6 on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491. "In  
7 authorizing the sale of property by receivers, courts of equity are vested with broad  
8 discretion as to price and terms." Gockstetter v. Williams, 9 F.2d 354, 357 (9th Cir.  
9 1925).

10 Here, the proposed sale to the Buyer for \$2,110,000.00, subject to the  
11 proposed overbid procedures, should be approved. In particular, the proposed  
12 overbid procedures are designed to (a) induce Buyer to remain in place as the initial,  
13 or "stalking horse" bidder; (b) allow qualified bidders to overbid; and (c) generate  
14 the highest and best price for the Property. The proposed Purchase Price is  
15 sufficient to make the net proceeds to the estate (after payment of the Broker's  
16 commission, and estimated escrow, closing and repair costs) approximately  
17 \$1.5 million. The subsequent bid increments of \$10,000.00 for each subsequent  
18 overbid is sufficient to ensure an orderly and efficient auction at the hearing. The  
19 Receiver submits that these amounts are reasonable and fair to all interested parties.

20 The Receiver believes, as discussed herein, given (a) the issues impacting the  
21 Property and (b) the relevant and current comparable sales, that the Purchase Price  
22 and terms of the proposed sale to Buyer, negotiated at arm's length and secured  
23 through the commercially reasonable and customary channels of marketing the  
24 Property with an experienced broker, reflect the fair market value of the Property.  
25 In addition, and as explained above, the Receiver and the Broker have diligently  
26 marketed the Property for sale through commercially reasonable and customary  
27 channels, resulting in serious interest generated among 14 prospective purchasers.  
28 From these parties, several competing offers were submitted, and a second round of

1 offers was solicited, ultimately resulting in the highest and best offer submitted by  
2 Buyer in the amount of \$2,110,000.00, which exceeds the estimated fair market  
3 value of the Property as reflected in a BOV commissioned by the Receiver.  
4 Accordingly, the Receiver believes, in his reasonable business judgment, that the  
5 proposed sale to Buyer, subject to overbid, is fair and reasonable, in the best  
6 interests of the receivership estate, and will generate the highest and best value for  
7 the Property. (Id. at ¶ 9.)

8 To ensure the highest and best price is obtained from sale of the Property, the  
9 proposed sale to Buyer is subject to overbid, by potential purchasers that qualify  
10 themselves as Qualified Bidders. The Receiver, with the assistance of Broker, has  
11 continued to market the Property with the goal of promoting active overbidding in  
12 accordance with the proposed overbid procedures described herein.

13 **B. Further Notices/Appraisals Should Be Waived**

14 Sales of real property out of federal receivership are governed by 28 U.S.C.  
15 § 2001, which provides that notice shall be given "by publication or otherwise as the  
16 court directs ... ." 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the  
17 court with discretion in directing the terms and conditions of the public sale."  
18 Keybank Nat'l Ass'n v. Perkins Rowe Assocs., LLC, 2012 U.S. Dist. LEXIS  
19 157828, \*4 (M.D. La. 2012); see also U.S. v. Little, 2008 U.S. Dist. LEXIS 93467,  
20 \*4-5 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in setting the  
21 terms and conditions of a sale pursuant to 28 U.S.C. § 2001."); U.S. v. Heasley, 283  
22 F.2d 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C. § 2001(b), "the  
23 matter of confirming a judicial sale rests in the sound judicial discretion of the trial  
24 court ..."); U.S. v. Peters, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C.  
25 § 2001(a) authorizes a court to direct the terms and conditions of the sale).

26 Here, the proposed notices of sale provided by mail and publication on the  
27 Receiver's website are reasonable given the extensive marketing efforts undertaken  
28 by the Receiver and the Broker, which efforts included extensive advertisement of



1 the Property in commercially reasonable and customary channels, and the Receiver  
2 and the Broker's continuing efforts to market and publicize the sale of the Property  
3 and the opportunity to overbid. The Receiver submits that further mailing or  
4 publication of notice and obtaining independent appraisals would impose significant  
5 costs on the receivership estate with little or no corresponding benefit. Accordingly,  
6 to the extent 28 U.S.C. §§ 2001, 2002 and Local Rule 66-7 require further mailing  
7 or publication of notice, appraisals, or other procedures, such provisions should be  
8 waived.

9 **C. Additional Relief**

10 Pursuant to its broad equitable powers with respect to the administration of  
11 receivership assets, the Receiver requests that the Court authorize payment from the  
12 proceeds of sale of the Property, the valid liens, taxes, and any other claims on the  
13 Property, subject to any objections to such liens, taxes, or claims by the Receiver.  
14 The Receiver also requests authority to pay a total commission in the amount of 5%  
15 of the final purchase price. Regardless of whether the ultimate buyer is represented  
16 by independent brokers, the commission paid will remain at 5%, and any  
17 commissions to buyer's broker will be paid from those funds.

18 As explained above, Broker's commission is the lowest offered by competing,  
19 comparable brokerage companies, and is fair and reasonable given that the sale of  
20 the Property required considerable time and effort on the part of Broker. Based on  
21 his extensive experience in real estate transactions, the Receiver believes that such  
22 commission is commercially reasonable and consistent with the real estate industry  
23 standard for sales of similar commercial property, and should be approved by this  
24 Court. (Donell Decl. ¶ 8.)

25 **VIII. CONCLUSION**

26 For the reasons set forth herein, the Receiver respectfully requests entry of an  
27 Order approving and authorizing: (1) sale of the Property to Buyer or the highest  
28

1 and best bidder; (2) the proposed overbid procedures; (3) payment of the proposed  
2 commission to Broker from the sale proceeds.

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

Dated: August 7, 2017

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

By:           /s/ Joshua A. del Castillo          

JOSHUA A. DEL CASTILLO  
Attorneys for Court-appointed  
Receiver STEPHEN J. DONELL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
ROBERT YANG, et al.,  
  
Defendants,  
  
YANROB'S MEDICAL, INC., et al.,  
  
Relief Defendants.

Case No. 5:15-CV-02387-SVW (KKx)  
  
[PROPOSED] GRANTING MOTION  
OF RECEIVER, STEPHEN J. DONELL,  
FOR ORDER APPROVING: (1) SALE  
OF LYNWOOD PROJECT; (2)  
OVERBID PROCEDURES; AND (3)  
REAL ESTATE BROKER'S  
COMMISSION  
  
Date: September 11, 2017  
Time: 1:30 p.m.  
Ctrm: 10A  
Judge: Hon. Stephen V. Wilson

**ORDER**

This Court has reviewed and considered the Motion of its appointed receiver,  
Stephen J. Donell (the "Receiver") for an order approving: (1) the Receiver's  
proposed sale of the real property and improvements located at 3599 Norton  
Avenue, Lynwood, California 90262 (aka 3598 Martin Luther King, Jr. Boulevard,  
Lynwood, California 90262) (the "Property"); (2) the Receiver's proposed overbid  
procedures to be used in connection with the sale of the Property; and (3) the  
payment of the Receiver's broker's total broker's commission of 5% of the sale price  
realized for the Property. In considering the Receiver's Motion, the Court has also  
reviewed the Receiver's concurrently submitted declaration, and the Purchase and

ORDER APPROVING AND AUTHORIZING  
SALE OF LYNWOOD PROPERTY

1 Sale Agreement ("PSA") dated June 5, 2017 by and between the Receiver and his  
2 proposed stalking horse bidder for the Property, INI Investment Corporation  
3 ("Buyer"), appended as an exhibit thereto.

4 Having considered the Motion, the Receiver's declaration, the PSA, and good  
5 cause appearing therefor, the Court orders as follows:

6 1. The Receiver's Motion is granted, in its entirety;

7 2. The Receiver's proposed sale of the Property, including the PSA, the  
8 Receiver's proposed overbid procedures, and the payment of all commission(s) due  
9 to the Receiver's and any affiliated or designated brokers, as described in the  
10 Motion, are Approved and authorized;

11 3. The Receiver is authorized to sell the Property to Buyer, Buyer's  
12 designee, or \_\_\_\_\_, the Qualified Overbidder, as that  
13 term is defined in the Motion, who submitted the highest and best bid for the  
14 Property at the hearing on the Receiver's Motion (the "Final Purchaser"), in  
15 conformity with the terms of the PSA;

16 4. In accordance with the terms of the PSA and without limiting its terms,  
17 the Final Purchaser shall purchase the Property on an "as-is, where-is" basis, without  
18 any representations or warranties whatsoever by the Receiver, his agents and/or  
19 attorneys including, without limitation, any representations or warranties as to the  
20 condition of the Property, except as expressly set forth in the PSA. The Final  
21 Purchaser shall be deemed to be solely responsible for its own due diligence,  
22 including but not limited to inspection of the condition of and title to the Property,  
23 and shall be deemed not to have relied upon any representation or warranty of the  
24 Receiver, except as expressly set forth in the PSA;

25 5. In the performance of his obligations pursuant to this Order, the  
26 Receiver's liability in connection with the PSA and the sale of the Property shall be  
27 limited to the assets of the receivership estate established in the above-entitled  
28 action. Neither the Receiver nor his agents and/or attorneys shall have any personal

1 liability for claims arising out of or relating to the performance of any actions  
2 necessary to complete the sale of the Property as provided for herein;

3         6.        Provided he obtains the written consent of the Final Purchaser, the  
4 Receiver is authorized to amend or otherwise modify the terms of the PSA and any  
5 other agreements or instruments reasonably necessary to effectuate the sale of the  
6 Property as provided for herein, in the event that the Receiver determines, in his  
7 reasonable business judgment, that such amendment or modification is reasonable  
8 and necessary, will benefit the receivership estate, avoid the imposition of liability  
9 upon the receivership estate, or is required pursuant to the terms of the PSA or any  
10 other amendment or modification thereto, provide that such amendment or  
11 modification does not change the material terms of the contract, including the  
12 identity of the Final Purchaser (unless Buyer elects to permit its designee to  
13 purchase) or the purchase price paid for the Property;

14         7.        The Receiver is hereby authorized to take all actions and execute all  
15 documents necessary to consummate and otherwise effectuate the sale of the  
16 Property to the Final Purchaser, including, but not limited to, the PSA itself, any  
17 other documents required to be executed pursuant to the PSA, and any related  
18 documentation, escrow instructions, or conveyance documents consistent with  
19 selling and conveying title to the Property to the Final Purchaser. The Receiver  
20 shall execute all documents necessary to consummate and otherwise effectuate the  
21 sale of the Property as "Stephen J. Donell, Court-appointed receiver" or any  
22 reasonable variation thereof which clearly identifies the Receiver as a court-  
23 appointed receiver;

24         8.        The Receiver is hereby authorized to execute and acknowledge a  
25 receiver's deed conveying title to the Property to the Buyer (the "Receiver's Deed"),  
26 substantially in the form of Exhibit B to the PSA, to effectuate the conveyance and  
27 cause the Receiver's Deed to be recorded on the date on which close of escrow  
28

1 occurs pursuant to the terms of the PSA, or as otherwise approved by the Receiver  
2 and the Final Purchaser;

3 9. The close of escrow ("Close of Escrow") for the sale of the Property  
4 shall occur as soon after the entry of this Order as soon as reasonably practicable, or  
5 as provided by the PSA;

6 10. The Receiver is hereby authorized to pay from the proceeds of sale of  
7 the Property, at the Close of Escrow: (a) all unpaid property taxes; (b) all other  
8 closing costs and commissions that are the responsibility of the seller as set forth in  
9 the PSA and/or related final closing statement; (c) any out of pocket expenses that  
10 the Receiver incurs in connection with the sale of the Property; and (d) any other  
11 expenses set forth in the PSA that are the responsibility of the Receiver as seller  
12 thereunder;

13 11. Subject to the other provisions of this Order, the net sale proceeds from  
14 the sale of the Property shall be remitted to the Receiver within three (3) days after  
15 the Close of Escrow;

16 12. Any licensed title insurer may rely on this Sale Order as authorizing the  
17 Receiver to transfer title to the Property as stated in Paragraph 8, above;

18 13. This Court retains jurisdiction over any dispute involving the Receiver  
19 in connection with the sale of the Property; and

20 14. A certified copy of this Sale Order may be recorded concurrently with  
21 the Receiver's Deed or at any time before the Close of Escrow, provided, however,  
22 that failure to record this Sale Order shall not affect the enforceability of this Sale  
23 Order, the enforceability and viability of the PSA, or the validity of the Receiver's  
24 Deed.

25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Stephen V. Wilson  
Judge, United States District Court

**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:

**NOTICE OF MOTION AND MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER APPROVING: (1) SALE OF LYNWOOD PROJECT; (2) OVERBID PROCEDURES; AND (3) REAL ESTATE BROKER'S COMMISSION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; [PROPOSED] ORDER**

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 **August 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**  
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 **August 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 **August 7, 2017** at Los Angeles, California.

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