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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

SECURITIES & EXCHANGE
 COMMISSION,

Plaintiff,

v.

ROBERT YANG, et al.,

Defendants,

and

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

Relief Defendants.

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

**OPPOSITION OF CELTIC BANK
 CORPORATION TO MOTION FOR
 ORDER ON RECOMMENDED
 TREATMENT OF CLAIMS AND
 DISTRIBUTIONS BY RECEIVER
 STEPHEN DONELL (AS TO CLAIM
 133)**

Date: November 13, 2017

Time: 1:30 p.m.

Ctrm. 10A

Judge: Hon. Stephen V. Wilson

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1 Secured Creditor Celtic Bank Corporation (“Celtic Bank”) hereby submits its Opposition
2 to the Motion for Order on Recommended Treatment of Claims and Distributions filed by
3 Receiver Stephen J. Donell (the “Receiver”) as to Claim 133.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **INTRODUCTION**

6
7 The Receiver’s Motion as it pertains to Celtic Bank and the Receiver’s accompanying
8 Objection to Celtic Bank’s Proof of Claim are factually inaccurate and legally deficient. The
9 Receiver does not begin to satisfy his burden to establish that the Receiver, rather than Celtic
10 Bank, is entitled to the \$2 million in cash collateral (the “Funds”) that Celtic Bank had
11 maintained in two segregated accounts until late June 2016 at Celtic Bank’s main offices
12 under Celtic Bank’s custody and control.

13 In his Objection, the Receiver assumes, without authority, an entitlement to the Funds
14 despite Celtic Bank’s properly perfected security interest in the Funds obtained before the
15 Receiver’s appointment. The Receiver tries to circumvent Celtic Bank’s perfected security
16 interest by arguing that the Court’s Order (Dkt. Nos. 83 & 84) predicated on a stipulation
17 proposed by counsel for the Receiver results in Celtic Bank forfeiting its perfected security
18 interest in the Funds. Not only is the Receiver’s position contrary to the stipulation its counsel
19 suggested at the June 6, 2016 hearing, but the very language of the Order to which the
20 Receiver stipulated also contradicts his position.

21 The Receiver also relies upon inapplicable legal authority that conflates his position with
22 a judgment creditor attempting to enforce a judgment against a deposit account, even though
23 the cases and the facts do not support such a conclusion. The Receiver’s additional argument
24 that Celtic Bank’s assertion of claims to its cash collateral is an attempt to enforce a deficiency
25 judgment is not only contrary to law, but the Receiver admits in his Objection that the
26 argument lacks merit. Finally, the amount of Celtic’s claim is established to be appropriate
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1 based upon the evidence submitted to the Court, including the evidence submitted by the
2 Receiver himself.

3 It is respectfully submitted that the Court must reject outright the Receiver's latest attempt
4 to circumvent Celtic Bank's legal and perfected claim to the cash collateral by overruling the
5 Receiver's Objection and denying the Motion as it pertains to Celtic Bank.

6
7 **PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

8 On or about February 17, 2012, Defendants HealthPro Capital Partners, LLC and SunCor
9 Care, Inc. (collectively, the "Borrowers") executed the following relevant loan documents
10 related to loans from by Celtic Bank and the security interests granted Celtic Bank (Zern Dec.
11 at ¶2):

12 (1) Loan No. 15009992 (hereinafter, "Loan No. 1") (Zern Dec. at ¶3)

13 (a) Business Loan Agreement evidencing a loan in the amount of
14 \$2,500,000.00 (**Exhibit "A"**);

15 (b) Construction Loan Agreement evidencing a loan in the amount of \$2,500,000.00
16 (**Exhibit "B"**);

17 (c) Commercial Security Agreement whereby the Borrowers granted a security interest
18 to Celtic Bank in certain collateral security (**Exhibit "C"**); and

19 (d) Assignment of Deposit Account wherein the Borrowers granted a security interest
20 to Celtic in Certificate of Deposit Account No. 13002962 containing an approximate balance
21 of \$1 million (**Exhibit "D"**).

22 (2) Loan No. 15010079 (hereinafter, "Loan No. 2") (Zern Dec. at ¶5)

23 (a) Business Loan Agreement evidencing a loan in the amount of \$2,500,000.00
24 (**Exhibit "E"**);

25 (b) SBA Promissory Note evidencing a loan in the amount of \$2,500,000.00 (**Exhibit**
26 **"F"**);

1 (c) Commercial Security Agreement through which the Borrowers granted a security
2 interest to Celtic Bank in certain collateral security (**Exhibit “G”**); and

3 (d) Assignment of Deposit Account wherein the Borrowers granted a security interest
4 to Celtic in Certificate of Deposit Account No. 13002962 containing an approximate balance
5 of \$1 million (**Exhibit “H”**).

6 On or about February 28, 2012, Celtic Bank caused to be filed with the California
7 Secretary of State the UCC-1 Financing Statement (the “UCC-1”) (**Exhibit “I”**). The UCC-1
8 describes all of the personal property of the Borrowers as collateral for Loan No. 1 and Loan
9 No. 2, including the cash collateral that had been pledged.

10 The loans were made for the purpose of financing the construction of a 72-bed sub-acute
11 medical care facility at 7227 Oleander Avenue in Fontana, California (the “Fontana
12 Property”).

13 Before the complaint in this matter was filed, Celtic Bank provided the SEC with copies
14 of all of the loan documents and security instruments for the two loans, including, without
15 limitation, the Commercial Security Agreements, and the Assignments of Deposit Accounts,
16 described hereinabove.

17 In or about January 2013, Celtic Bank learned that the construction project was
18 significantly over budget and, pursuant to the terms of the loan documents, Celtic Bank
19 stopped advancing loan funds and notified the Borrowers that Celtic Bank deemed the
20 Borrowers in default. On June 9, 2014, after lengthy communications surrounding obtaining
21 additional collateral to secure the loan and assurances from the Borrowers that sufficient
22 funds existed to complete the project, Celtic Bank entered into an agreement with the
23 Borrowers entitled “Continuation Agreement” (**Exhibit “J”**). Pursuant to the terms of the
24 Continuation Agreement, the Borrowers were required to pledge an additional \$1 million in
25 cash collateral, and they did so. Had the Borrowers failed to provide the additional cash
26 collateral as security and provide further assurances, Celtic Bank would have exercised its
27 security rights under the Loan Documents and Security Instruments. The cash collateral was
28 deposited into Certificate of Deposit Account No. 11900821 at Celtic Bank’s main offices in

1 Salt Lake City Utah under Celtic Bank's sole control and control and maintained in such
2 account until late June 2016.¹

3 Borrowers were complying with all material terms of the Continuation Agreement before
4 the Complaint was filed in the above-captioned Action in November 2015.

5 Celtic Bank entered into the Continuation Agreement in a good-faith effort to work with
6 Borrowers. The Continuation Agreement explicitly acknowledged that Celtic Bank continued
7 to maintain perfected security interests in the two Deposit Accounts and the Funds. Celtic
8 Bank entered into the Continuation Agreement in a commercially reasonable effort to avoid
9 both Celtic Bank and the Borrowers suffering substantial financial losses and based on
10 assurances from representatives of the Borrowers that they would be able to raise or
11 contribute sufficient capital if necessary to complete the project. For Celtic Bank to have
12 proceeded with foreclosure in the face of Borrowers' willingness to post additional cash
13 collateral and the aforesaid assurances appeared at the time to be both unnecessary and
14 imprudent. Had Celtic Bank not entered into the Continuation Agreement and immediately
15 exercised its security rights and claims against Guarantors, the result would have been
16 prejudicial to the unsecured creditors of Borrowers and Guarantors, whom the Receiver is
17 sworn to protect, as Celtic Bank would have asserted claims against Defendants who
18 executed Guarantees and seized assets of those Guarantors.

19 On or about December 11, 2015, the Court entered the Appointment Order. The
20 Appointment Order provides in relevant part as follows (at Page 8, lines 2 through 6):

21 1. The Receiver is authorized to take immediate possession of all
22 assets, bank accounts or other financial accounts, books and
23 records and all other documents or instruments relating to the
24 Suncor Receivership Entities. All persons and entities having
25 control, custody or possession of any Receivership Property are
26 hereby directed to turn such property over to the Receiver.

27 ¹ When the Court ordered the turnover of the funds to the Receiver to place in a segregated
28 account pending further order of the Court as to who had a right to the proceeds.

1 Celtic Bank is not a party to this action, and was provided with no notice of the
2 Receiver's application for the Appointment Order. The term "Receivership Property" is, at
3 best, only vaguely defined in the Appointment Order. Celtic Bank views its perfected security
4 interest in the cash collateral to be superior to the Receiver's claims. Indeed, it is Celtic
5 Bank's position that the Receiver was not given authority under the Appointment Order, to
6 demand possession of assets as to which third party innocent creditors, such as Celtic Bank,
7 held a perfected security interest. The Receiver's Motion assumes, without any foundation,
8 that he had such power.

9 Once Celtic Bank determined that the Receiver had been appointed and that a Temporary
10 Restraining Order had been entered, Celtic Bank decided against pursuing its remedies under
11 the security instruments until further orders were entered by the Court. In fact, the Order
12 Appointing Receiver and Temporary Restraining Order arguably preempted Celtic Bank
13 from pursuing any remedy.

14 Celtic Bank received the Receiver's request for turnover of funds on March 4, 2016. After
15 that date, Celtic Bank's counsel had multiple and regular communications dating back to the
16 first week in March 2016 with counsel for the Receiver. Those attorneys repeatedly discussed
17 that the funds on deposit with regard to those loans were, in Celtic Bank's view, cash
18 collateral security for the loan obligations that had been pledged to Celtic Bank and as to
19 which Celtic Bank maintained a security interest and not simply funds on deposit with Celtic
20 Bank.

21 Celtic Bank, therefore, was of the position that it was not under an obligation to turn over
22 its pledged cash collateral. Nevertheless, in an effort to avoid protracted and expensive Court
23 proceeding and under threat by the Receiver of his filing a contempt citation, in negotiations
24 with counsel for the Receiver, counsel for Celtic Bank offered to stipulate with the Receiver
25 that the Funds would be turned over to the Receiver under a Stipulation and Order through
26 which the Funds would be held in trust by the Receiver, his counsel or the Court Clerk in a
27 segregated interest-bearing account pending a final determination of whether Celtic Bank or
28 the Receiver had a right to such proceeds and that Celtic Bank would stipulate to the turnover

1 of the funds to the Receiver so long as it maintained its claims to the funds as pledged
2 security in which it had a perfected security interest and the rights arising therefrom.

3 The Receiver, however, rejected this offer and, on April 5, 2016, made an *ex parte*
4 Application seeking to hold Celtic Bank in contempt for failing to turn over the cash collateral
5 to the Receiver (Dkt. No. 48). After Celtic Bank incurred a significant amount of time and
6 money opposing the Application through which the Receiver sought to sanction Celtic Bank,
7 at the hearing of the Contempt Citation on June 6, 2016, the Receiver offered to and did
8 stipulate to the proposal Celtic Bank's counsel made in the first place, before the filing of the
9 Application. The stipulation is as stated in a stipulated amendment filed June 22, 2016 (Dkt.
10 No. 94) to the Court's June 6, 2016 Minute Order:

11 In light of the representations at the hearing, the Court orders Celtic Bank to
12 turn over the property at issue. The Court *further* orders *the receiver, Stephen*
13 *J. Donell, to hold the property in trust in a separate account pending a final*
14 *determination of who has a right to such property.* The parties agreed that the
15 marshalling of property does not resolve the question of which party has a
16 superior right to the property and the receiver agreed to retain possession of the
property until such time as there is a resolution of the seniority of the claims to
the property.

17 On August 15, 2016, an order was entered in the above-captioned Action under which the
18 Receiver was authorized to abandon the Fontana Property (Dkt. No. 133), which is the real
19 property collateral pledged to Celtic Bank and the situs upon which Borrowers had been
20 engaged in construction. By the time this Order was entered, the Fontana Property was not
21 only incomplete but had suffered severe damage and deterioration and the construction
22 already completed on the Project was to a large degree unusable, requiring portions of the
23 project to be demolished.

24 After entry of this Order, Celtic Bank proceeded with foreclosure of the Fontana Property.
25 On December 22, 2016, a Trustee's Deed Upon Sale was recorded in the Offices of the
26 County Recorder of San Bernardino County, California as Instrument 2016-0562410. As
27 memorialized in that instrument, Celtic Bank acquired title to the Fontana Property at a
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1 Trustee Sale under the terms of the Deed of Trust Borrowers had granted Celtic Bank for a
2 credit bid of \$1,200,000.00.

3 Celtic Bank has remained in title to the Fontana Property. Before the Trustee’s Sale and
4 after the Receiver was appointed, Celtic Bank incurred and has continued to incur significant
5 expenses as to that property, including maintaining force-place insurance on the Fontana
6 Property and efforts to secure and weatherproof the property While the Receiver contends that
7 Celtic Bank was not required to maintain force-placed insurance, at all times relevant, the
8 Receiver knew that Celtic Bank was doing so and the Receiver’s policy did not name Celtic
9 Bank as an additional insured. For Celtic Bank not to maintain such insurance would have not
10 only been imprudent, but also would have been a regulatory violation.

11
12 **AUTHORITY AND ANALYSIS**

13 **1. The Receiver Has Not Satisfied Its Burden of Proof to Establish that the Receiver Is
14 Entitled to the Cash Collateral.**

15 In order to state an entitlement to the disputed funds, the burden is on the Receiver to
16 “show that the nominal defendant [read: Celtic] has received ill gotten funds *and* that he does
17 not have a legitimate claim to those funds.” *S.E.C. v. Colello*, 139 F.3d 674, 677 (9th Cir.
18 2011); *U.S. Commodity Futures Trading Com'n v. WeCorp, Inc.*, 848 F.Supp.2d 1195, 1201
19 (D. HI 2012).

20 Here, even assuming *arguendo* that the Receiver can establish that the monies deposited
21 into the accounts held as cash collateral for Loan No. 1 and Loan No. 2 were “ill gotten funds”
22 as far as to the Defendants are concerned, it is up to the Receiver — not Celtic Bank — to
23 establish that Celtic Bank does not have a legitimate right to the funds. The Receiver cannot
24 and does not do so in either the Motion or the Objection to Celtic Bank’s claim. Indeed, the
25 Receiver asks the Court to assume implicitly that the funds constitute “Receivership Property”
26 under the Appointment Order, but the Appointment Order does not directly define
27 “Receivership Property” and nowhere in that Order is the Receiver granted the power to avoid
28 valid and perfected security interests.

1 26 U.S.C. Section 6323(h)(1) provides in relevant part as follows:

2 Security interest. The term "security interest" means any interest in property
3 acquired by contract for the purpose of securing payment or performance of an
4 obligation or indemnifying against loss or liability. A security interest exists at
5 any time (A) if, at such time, the property is in existence and the interest has
6 become protected under local law against a subsequent judgment lien arising out
of an unsecured obligation, and (B) to the extent that, at such time, the holder
has parted with money or money's worth.

7 There is no dispute that, at least through the turnover of the Funds as Ordered by the Court
8 in June 2016, Celtic Bank has a valid perfected security interest in the cash collateral. Celtic
9 Bank maintains that its valid and perfected security interest in that cash collateral remains to
10 this day. Unless the Receiver can establish that it does not, the Receiver cannot recover the
11 funds. As is more fully set forth below, the Receiver does not begin to meet its burden.

12 **2. The Turn Over of the Deposits Pursuant to the Parties' Stipulation and Order**
13 **Thereon Did Not Extinguish Celtic Bank's Security Interest.**

14 As stated above, the Receiver had brought an Application to deem Celtic Bank and its
15 counsel in contempt for failing to unconditionally turn over the Funds, but at the hearing the
16 Receiver's Application was denied and Receiver's counsel proposed and stipulated to an order
17 in which the Receiver would "hold the property in trust in a separate account pending a final
18 determination of who has a right to such property" (Dkt. No. 83).

19 Pursuant to Stipulation, that Order was amended to include the following language: "*The*
20 *parties agreed that the marshalling of property does not resolve the question of which party*
21 *has a superior right to the property and the receiver agreed to retain possession of the*
22 *property until such time as there is a resolution of the seniority of the claims to the property.*"

23 [Emphasis added]

24 But in the Motion, the Receiver now contends that its stipulations and the aforesaid
25 Orders are utterly meaningless. Specifically, the Receiver would like this Court to believe that
26 by stipulating that the cash collateral deposits could be held in a segregated account by the
27 Receiver pending a further determination by the Court, Celtic Bank was relinquishing its

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1 rights to claim a perfected security interest in the Funds when it complied with this Court's
2 Order. That argument violates both the letter and the spirit of the June 22, 2016 Order.

3 Putting the matter in context, it is important to recall that not only did the Receiver
4 demand the turnover of the funds, but it went so far as to file an Application that Celtic Bank
5 and its counsel were in contempt of Court by failing to do so. Celtic Bank agreed to a
6 compromise through which the funds could be held in a segregated account by the Receiver as
7 the parties and the Court sorted out the issues as to the extent of Celtic Bank's and the
8 Receiver's claims to the funds.

9 In so doing, however, Celtic Bank did not agree to give up its claims that the funds
10 constituted security that it could execute against based upon the Borrowers' default on Loan
11 No. 1 and Loan No. 2. In fact, as quoted above, the parties specifically stipulated that the
12 turnover of the funds to a segregated account was nothing more than a "marshalling of
13 property" that "does not resolve the question of which party has a superior right to the
14 property." Under the Receiver's new interpretation, this language has no meaning, because the
15 moment Celtic Bank complied with the stipulation and turned over the funds to the segregated
16 account, it was relinquishing any rights it had to claim that the funds were security for the
17 obligations.

18 The Receiver's argument that the parties' Stipulation to transfer the funds to the
19 segregated account was Celtic Bank's relinquishment of its rights to claim the funds as
20 security is misinformed at best and disingenuous at worst. Either the Court's June 22, 2016
21 Order as amended means what it says, or it does not. If it does mean what it says, the Order
22 renders invalid the Receiver's argument that the turnover of the funds under that Order
23 destroyed Celtic Bank's security interest in those funds. Further, it is respectfully submitted
24 that the Receiver is estopped to even assert this argument.

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1 **3. Celtic Bank Did Not Lose Its Security Interest in the Deposited Funds by Not**
2 **Previously Enforcing Its Security Interest Against the Deposited Funds.**

3 Perhaps in acknowledgment of the weakness of that argument, the Receiver segues in that
4 argument to a fall-back position that Celtic Bank lost its security interest in the funds because
5 it “waited too long” to foreclose upon those deposited funds and the Appointment Order and
6 turnover demand from the Receiver were intervening acts that puts the Receiver in a superior
7 position to claim the cash collateral. The Receiver purports to cite supporting authority for this
8 proposition. But a careful review of that authority and of the facts of this case demonstrate that
9 this argument lacks any merit whatsoever.

10 The first case cited by the Receiver is *Frierson v. United Farm Agency*, 868 F.2d 302 (8th
11 Cir. 1989). Not only does this case apply Missouri law, but it makes the following important
12 statement about Article 9 of the Uniform Commercial Code that the Receiver conveniently
13 omits from his argument:

14 Regardless of whether the funds in question are viewed as collateral or as
15 proceeds, Article 9 requires that Frierson [the judgment debtor executing on the
16 deposited funds] take the remaining funds subject to Merchants' [the bank
17 holding the deposited funds and claiming them as collateral] security interest if
18 the bank refuses to exercise its remedies under the code. § 400.9–306(2).
19 Merchants' security interest in the funds will continue, and Merchants can trace
20 and recapture when it chooses to declare the loan in default and accelerate the
21 debt. *Id.* at 305.

22 In other words, even under the Receiver’s argument that Celtic Bank had not yet declared
23 a default at the time the funds were turned over, under *Frierson* Celtic Bank retains its rights
24 to enforce against that collateral and can recapture those funds, even if the Receiver could
25 claim that its position is the same as a judgment creditor attempting a garnishment.

26 The other cases cited by the Receiver are no further help to his position. *American Home*
27 *Assurance Co. v. Weaver Aggregate Transport, Inc.*, 84 F.Supp.3d 1314 (M.D. Fl. 2015) is a
28 district court case from Florida applying Illinois law in yet another garnishment case, and in
that case the lender could not have claimed the loan was in default before the garnishment

1 took place. *Id.* at 1321-1322. Moreover, the Court in that case makes no comment at all as to
2 the continuing rights of the lender to enforce against and recapture the funds as in *Frierson*.
3 *S.E.I.U. Local No. 4 Pension Fund v. Pinnacle Health Care of Berwyn LLC*, 560 F.Supp.2d
4 647 (N.D. Ill. 2008) is yet another district court case interpreting Illinois law, and that Court
5 cited favorably to *Frierson*, which allowed for the subsequent tracing and recapture of the
6 secured funds upon the declaration of a default. *Id.* at 650-651. The Receiver does cite one
7 California case, *Orix Financial Services, Inc. v. Kovacs* (2008) 167 Cal.App.4th 242, but that
8 case does not pertain to cash collateral at all – the account levied against by the judgment
9 creditor via garnishment was an account holding funds obtained from the liquidation of the
10 debtor’s assets. *Id.* at 245-246.

11 All of these cases, however, suffer from one fundamental defect that makes them
12 irrelevant as to this case: Each case pertains to enforcement against a deposit account *by a*
13 *judgment creditor*. The Receiver is *not* a judgment creditor. A judgment creditor has an
14 established right to enforce that judgment against assets of the judgment debtor based upon the
15 satisfaction of due process as to the judgment debtor. As referenced above, there has been no
16 adjudication as to the Receiver’s rights, if any exist, to the funds in dispute in this Motion.

17 This whole argument, therefore, begs the question as to whether the Receiver is entitled to
18 the funds in the first place, which is the fundamental issue the Court has to decide. This
19 argument sheds no light on that issue at all.

20 What is relevant, however, is that Celtic Bank acted reasonably with regard to the
21 Borrowers in general and the cash collateral in particular. When Celtic Bank learned in
22 January 2013 that the construction project was significantly over budget, it stopped advancing
23 loan funds. Then in June 9, 2014, Celtic Bank and the Borrowers entered into the Continuation
24 Agreement (**Exhibit “J”**), which not only required that the Borrowers deposit \$2 million, but
25 that the funds were considered to be cash collateral (section 3.b.) and that Celtic Bank had the
26 right of setoff against those funds (section 4). Those funds were held, in their entirety, by
27 Celtic Bank until turned over in response to the above-referenced Stipulation and Order.

1 Indeed, in its objection, the Receiver appears to acknowledge that Celtic Bank had a perfected
2 interest in these funds at least until it complied with this Court's June 6, 2016 Order, as
3 amended.

4 So what the Receiver claims to be Celtic Bank's inaction was actually an exercise of
5 commercial reasonableness, Celtic Bank and the Borrowers avoided default, the project at the
6 Fontana Property could continue, and the Borrowers had complied with all material terms of
7 the Continuation Agreement until the Complaint was filed in this action in November 2015.
8 After that point, it would have been impossible for Celtic Bank to deem the Borrowers in
9 default and act against the cash collateral. Indeed, the Receiver sought a contempt order
10 against Celtic Bank and its counsel based upon a simple failure to turn over the disputed funds
11 to the Receiver; imagine the Receiver's reaction if Celtic Bank would have taken the
12 deposited funds outright and then asserted claims against the individual Guarantors named as
13 Defendants in this Action.

14 The Receiver has failed to establish that any alleged failure to act by Celtic Bank against
15 the cash collateral earlier has any impact whatsoever upon the Receiver's claim of a purported
16 right to the cash collateral.

17
18 **4. Celtic Bank's Claim to the Funds Is a Claim Against Pledged and Perfected Security
for Borrowers' Loans, Not an Attempt to Collect Upon an Unsecured Deficiency.**

19 The next series of misstatements of facts and law within the Receiver's Motion and
20 Objections pertains to Celtic Bank's alleged pursuit of an unsecured deficiency claim. This
21 argument completely misstates both the facts and law.

22 The Receiver contends that once Celtic Bank non-judicially foreclosed on the Fontana
23 Property, it could not then foreclose upon its security interest in the cash collateral. This is
24 simply not true. Loan No. 1 and Loan No. 2, under the Continuation Agreement, were secured
25 by both the Fontana Property and the pledged cash collateral. There were, therefore, two types
26 of security. Under California Commercial Code section 9604(a)(1)(A), Celtic Bank had the
27 right to proceed, in any sequence, with its foreclosure of both the Fontana Property and the
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1 cash collateral. Foreclosing upon the Fontana Property did not then render any claim against
2 the cash collateral to be an improper attempt to enforce upon a deficiency judgment after a
3 non-judicial foreclosure.

4 The Receiver appears to have been aware of this when filing his Objection: “The Receiver
5 believes that Celtic Bank will claim that it has an independent secured claim with regard to the
6 Deposits. California’s anti-deficiency rules do not bar a lender from pursuing a separately
7 perfected security interest in personal property.” [Objection, 15:21-24] Why, then, did the
8 Receiver make the argument at all? The next sentence makes it clear that this argument
9 *entirely depends* upon the Receiver’s success as to his other arguments: “However, as detailed
10 above in Section III.A.1., Celtic Bank’s security interest in the Deposits was extinguished by
11 the entry of the Appointment Order, the Receiver’s turnover request, or the turnover of the
12 Deposits in accordance with the Court’s instructions, meaning its claim to such funds is now
13 barred.” In other words, this argument is circular and nonsensical.

14
15 **5. Celtic Bank’s Claim Is Not Overstated.**

16 The Receiver finally argues that Celtic Bank’s claim is overstated because it claims
17 \$86,741.00 for force-placed insurance on the Fontana Property, even though the Receiver
18 maintained insurance on the Fontana Property. That argument fails for two reasons. First, the
19 Receiver never notified Celtic Bank that it viewed Celtic Bank maintaining this insurance as
20 unnecessary and additionally, the insurance maintained by the Receiver did not name Celtic
21 Bank as an additional insured. Therefore, Celtic Bank acted reasonably in maintaining Force-
22 Place insurance. Indeed, Exhibit 3 to Mr. Donell’s Declaration confirms that the insurance the
23 Receiver obtained on the Fontana Property did not name Celtic Bank as an additional insured.
24 If Celtic Bank, therefore, had not maintained its own insurance, it would have been uninsured
25 for its own risk of loss and in violation of regulatory requirements that it was mandated to
26 follow. The \$86,741.00 claimed by Celtic Bank, therefore, is recoverable.

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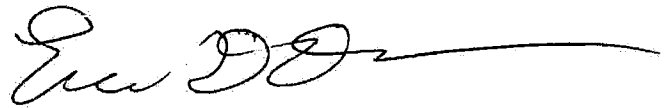
1 The Receiver also questions the amounts claimed by Celtic Bank, but paragraphs 18 and
2 19 of the accompanying Declaration of Brian Zern clear up those questions, in that (1) Celtic
3 Bank seeks interest at the contract rate, not a default rate, and (2) Celtic Bank's claim is only
4 for the \$2 million in pledged collateral plus the interest earned on those funds since the
5 Receiver took possession of the pledged collateral.

6 **CONCLUSION**

7
8 The Receiver has failed in its attempt to state a claim to the \$2 million in cash collateral
9 that properly belongs to Celtic Bank as security for Loan No. 1 and Loan No. 2. Because the
10 Receiver has failed to meet his burden in this regard, as well as for all or any of the reasons
11 stated herein, Celtic Bank respectfully requests that the Court overrule the Receiver's
12 Objection to Celtic Bank's claim and deny the Motion as it pertains to Celtic Bank.

13 DATED: October 23, 2017

FITZGERALD YAP KREDITOR LLP

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16 _____
17 Eric D. Dean
18 Attorneys for Secured Creditor Celtic Bank
19 Corporation
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CERTIFICATE OF SERVICE

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Dorothy White v. John R. Warren, Trustee of the John and Laura Warren Trust U/T/D August 24, 1995, et al.
U.S.D.C., Southern District of California Case No.: 17-cv-1059-AJB-NLS

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 16148 Sand Canyon Avenue, Irvine, California 92618.

On October 23, 2017, I served the foregoing document(s) described as:

OPPOSITION OF CELTIC BANK CORPORATION TO MOTION FOR ORDER ON RECOMMENDED TREATMENT OF CLAIMS AND DISTRIBUTIONS BY RECEIVER STEPHEN DONELL (AS TO CLAIM 133)

in the manner(s) indicated as follows:

(MAIL) Service will be accomplished by placing a true and correct copy thereof in a sealed envelope with postage prepaid addressed to the following party(ies) listed on the manual notice list as determined by the CM/ECF Mailing Info for a Case for the above-entitled case. I am readily familiar with FitzGerald Yap Kreditor LLP's ordinary business practice of collection and processing correspondence for mailing. via mail by depositing with the U.S. Postal Service I followed this business practice and I placed the envelope for collection and mailing on the date identified above. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

(ELECTRONIC SERVICE VIA THE COURT'S NOTICE OF ELECTRONIC FILING) ("NEF") Service will be accomplished via electronic transmission through the Court's Case Management/Electronic Case Filing System ("CM/ECF") in accordance with the rules governing electronic case filing and the subsequent service of documents in the United States District Court, Central District of California. The NEF that is automatically generated by the Court's CM/ECF constitutes service of the filed document. The CM/ECF Mailing Info for a Case indicates the following parties in the above-entitled case are on the electronic mail notice list to receive NEF transmission:

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I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

/s/ Eric. D. Dean