

1 FITZGERALD YAP KREDITOR LLP
 2 Eric D. Dean (SBN 56854)
 3 edean@fyklaw.com
 4 16148 Sand Canyon Avenue
 5 Irvine, California 92618
 6 Telephone: (949) 788-8900
 7 Facsimile: (949) 788-8980
 8 Attorneys for Secured Creditor
 9 CELTIC BANK CORPORATION

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

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)

**SUPPLEMENTAL OPPOSITION TO
 RECEIVER’S MOTION RE
 OBJECTION TO CLAIM OF CELTIC
 BANK CORPORATION PURSUANT TO
 THE COURT’S ORDER OF
 NOVEMBER 14, 2017**

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

///

1 Claimant Celtic Bank Corporation (“Celtic Bank”) hereby submits its supplemental points and
2 authorities pursuant to the Court’s Order of November 14, 2017 as follows:

3
4 **1. THE UNDERLYING FACTS RELEVANT TO THE DETERMINATION OF THIS
MOTION ARE NOT SUBJECT TO DISPUTE.¹**

5 In order to put Celtic Bank’s Claim in a proper context, it is important to first identify the events
6 leading up to the current Motion as well as relevant admissions by the Receiver and key provisions of
7 relevant loan documents.

8 1. Celtic Bank, as Lender, Assignee and Secured Party, made two loans (the “Loans”) in the
9 aggregate amount of \$5 million to HealthPro Capital Partners, LLC (“HealthPro”) and Suncor Care
10 Inc (“Suncor”) as borrowers, grantors, pledgors and assignors. The pledged collateral for both Loans
11 was a Deed of Trust in first position against real property located in Fontana, California (the “Fontana
12 Property”) and \$2 million in cash collateral placed in two accounts at Celtic Bank (the “Cash
13 Collateral”).² Health Pro and Suncor (collectively the “Borrowers”) intended to construct and operate
14 an assisted living facility on the Fontana Property. The Loan proceeds were primarily for construction
15 and working capital once the construction was completed.³

16 2. Under the terms of the Loan Documents, Borrowers agreed that all pledged collateral would
17 remain subject to Celtic Bank’s first security position until all indebtedness owed Celtic Bank by
18 Borrowers was paid in full. For example, the Assignment of Deposit Account states, in pertinent part:

19 “Lender’s Rights and Obligations With Respect to the Collateral... This Agreement
20 will remain in effect until (a) there is no longer any indebtedness owing to Lender, (b)
21 all other obligations secured by this Agreement have been fulfilled, and (c) Grantor, in
writing has requested from Lender a release of this Agreement.”⁴ [Emphasis added].

22 3. The Receiver abandoned claims to the Fontana Property in August, 2016 and on December 22,
23 2016, after due notice, a trustee sale foreclosure of the Fontana Property was completed. Celtic Bank
24
25

26 ¹ See Dean Declaration (Dkt. No. 194), Zern Declaration (Dkt. No. 193) and Supplemental Zern Declaration.

27 ² See Exhibits to Supplemental Zern Declaration. Exhibits A through L of that Declaration are referred to as the “Loan Documents”. There are other possible loan documents which are not germane to this Motion.

28 ³ See Supplemental Zern Declaration.

⁴ Assignment of Accounts Agreements at p. 2, Exhibits D and H to Supplemental Zern Declaration.

1 acquired title to the Fontana Property by credit bid of \$1.2 million.⁵ There were no other bidders at the
2 trustee sale. Per the terms of the Loan Documents, Celtic Bank’s credit bid constitutes the best
3 evidence of the value of the Fontana Property:

4 “[i]f Lender forecloses on any real property collateral pledged by the Borrower (A) the
5 amount of the Borrower’s obligation may be reduced only by the price for which the
Collateral is sold at the foreclosure sale.”⁶

6 4. After the Trustee Sale, the only remaining collateral for the balance owed on the Loans was
7 the pledged Cash Collateral in which Celtic Bank maintained a perfected security interest. It is
8 undisputed that Celtic Bank had a perfected security interest in the \$2 million in pledged cash
9 collateral at least until the Receiver was appointed: “[t]here is no dispute as to the existence of the
10 Accounts nor is there any dispute that Celtic Bank had a security interest in the Accounts ...”⁷

11 Celtic Bank’s right to maintain control of the Accounts and Cash Collateral is further evidenced
12 by the terms of the Loan Documents. For example, the Assignment of Deposit Account Agreements,
13 in addition to the provision referenced above, provides:

14 “Cross- Collateralization this Agreement secures all obligations, debts and liabilities...
15 whether now existing or hereafter arising”;

16 “No Waiver by Lender: “Lender shall not be deemed to have waived any rights under
this Agreement unless such waiver is given in writing and signed by Lender.”⁸

17 The provisions of the Commercial Security Agreements also are probative:

18 “Perfection of Security Interest (p.1). This is a continuing Security Interest and will
19 continue in effect even though all or any part of the Indebtedness is paid ...”

20 “Lender shall have and may exercise any or all other rights and remedies it may have
available at law, in equity, or otherwise.”⁹

21 ///

22

23

24

25

26 ⁵ See Zern Declaration, Dkt. No. 193 at p. 5 lns 4-10; See also Trustee’s Deed Upon Sale, Exhibit L to Supplemental Zern
Declaration).

27 ⁶ See Assignment of Deposit Account, Exhibits D and H, at p. 1 and Deed of Trust, Exhibit J at p. 2 to Supplemental Zern
Declaration. Celtic Bank gave credit for the \$1.2 million in its Claim (see Claim No. 183).

28 ⁷ See Receiver’s Reply, Dkt. No. 195 at p. 2 lns. 17-19.

⁸ See Assignment of Deposit Account, Exhibits D and H to Supplemental Zern Declaration, at pp. 1 and 4.

⁹ See Commercial Security Agreement, Exhibits C and G to Supplemental Zern Declaration, at p. 1.

1 5. The Loan Documents also gave Celtic Bank broad discretion over where the Cash Collateral
2 would be held:

3 “Location of Collateral ... Grantor agrees to keep the Collateral (or to the extent the
4 Collateral consists of ...accounts or general intangibles)... at Grantor’s address shown
above or at such other locations as are acceptable to Lender.”¹⁰ (Emphasis added)

5 6. The June 9, 2014 Continuation Agreement¹¹ confirmed Celtic Bank’s continued security
6 interest and right to the \$2 million of pledged cash collateral.¹²

7 7. The June 6, 2016 Order as amended on June 22, 2016¹³ was entered at a hearing of an Order to
8 Show Cause by the Receiver seeking to hold Celtic Bank in contempt for its refusal to unconditionally
9 turn over the Cash Collateral pledged as security for the Loans.¹⁴ The events leading up to and related
10 to the entry of the June 6, 2016 Order are set forth in the Dean Declaration.¹⁵

11 8. It is also without dispute that upon his appointment, the Receiver assumed *only* those rights
12 that Borrowers had in the pledged Cash Collateral prior to the Receiver’s appointment: “he [the
13 Receiver] stood in the shoes of the owners of the Accounts [the Borrowers].”¹⁶

14 9. Upon the appointment of the Receiver, the Loan balances were immediately accelerated and
15 the Loans went into default.¹⁷

16 It also is important to emphasize that the Receiver has the burden of proof to show that Celtic
17 Bank, as a nominal defendant “... does not have a legitimate claim to the funds.”¹⁸

18
19
20
21

22 ¹⁰ See Commercial Security Agreement, Exhibits C and G to Supplemental Zern Declaration, at p. 2. It is Celtic Bank’s
23 position that its Stipulation to allow the Receiver to hold the Cash Collateral in trust in a segregated account was consistent
with this provision and did not constitute a waiver.

24 ¹¹ Exhibit L to Supplemental Zern Declaration.

25 ¹² See Continuation Agreement, Exhibit K to Supplemental Zern Declaration, p. 3 at Section 3.c.

26 ¹³ Dkt. Nos. 83 and 94.

27 ¹⁴ Receiver’s Reply Dkt. No. 195 at p. 3 lns. 4-7.

28 ¹⁵ Dkt. No. 194.

¹⁶ Receiver’s Reply, Dkt. No. 195 at p. 4 ln. 22.

¹⁷ See Notes, Exhibits A and E at pp.2-3; Business Loan Agreements, Exhibits B and F at pp. 4-5; Commercial Security
Agreement Exhibits C and G at pp. 3 and 4, and Assignments of Account, Exhibits D and H at pp. 2 and 3 to the
Supplemental Zern Declaration.

¹⁸ *S.E.C. v. Colello*, 139 F. 3d 674, 677 (9th Cir. 2011). See also, *U.S. Commodity Future Trading Com’n v. WeCorp, Inc.*,
848 F. Supp. 2d 1195, 1201 (D. HI 2012).

1 **2. CELTIC BANK HAS MAINTAINED ITS SECURITY INTEREST IN THE PLEDGED**
2 **CASH COLLATERAL AND THE RECEIVER IS ESTOPPED FROM CONTENDING TO**
3 **THE CONTRARY.**

3 In its Motion, the Receiver makes three arguments as to why he and not Celtic Bank is entitled to
4 the Cash Collateral. As hereinafter detailed, each of these arguments was and is without foundation.

5 **2.1. Receiver’s Contention 1: The Receiver Stands in the Shoes of the Borrower and**
6 **Therefore Had the Unfettered Right To Withdraw the Funds Once Appointed.**
7 **(Receiver’s Reply, Dkt. No.195, p. 2 lns. 17-19 and p. 4 lns. 21-22).**

7 The Receiver’s contention that it had an unfettered right to withdraw the funds once he was
8 appointed flies in the face of legal precedent, the Receiver’s own admissions, and the Loan
9 Documents.

10 The Receiver has conceded that Celtic Bank has a perfected security interest and that once the
11 Receiver was appointed, he “stood in the shoes” of the Borrowers.¹⁹ By definition, once a lender has
12 perfected an interest in collateral pledged by the borrower, the lender has a property interest in the
13 pledged collateral superior to the interest of the borrower and its successors and assigns. For example,
14 as noted above, the Assignment of Deposit Account provides:

15 **Lender’s Rights and Obligations With Respect to the Collateral...** This Agreement
16 will remain in effect until (a) there no longer is any indebtedness owing to Lender, (b)
17 all other obligations secured by this Agreement have been fulfilled

17 **Successors and Assigns.** ... this Agreement shall be binding upon and inure to the
18 benefit of the parties, their successors and assigns...²⁰

19 These provisions are in accordance with well established law:

- 20 • “The collateral is immediately subject to the pledge and the pledge constitutes a
21 lien and security interest... enforceable in accordance with the pledge document.
22 The lien and security interest are enforceable against the pledgor, its
23 successors...pursuant to the pledge document....”²¹
- 23 • “The pledgee is entitled to possession until the debt is paid....”²²
- 24 • “ ...a pledgor is bound to make a proper tender of payment before return of the
25 pledge may be demanded.”²³

26 ¹⁹ See quotes from the Receiver’s Reply, Dkt. No. 195, as quoted above.

27 ²⁰ Assignment of Deposit Account pp. 2 and 4, Exhibits D and H to Supplemental Zern Declaration.

28 ²¹ Cal. Jur. 3d Sec. 65.

²² 4 Witkin, Summary 11th Sec Trans.-PP Sec 7 (2017).

²³ 57 Cal. Jur. 3d. Secured Transactions Sec. 271 at p.2.

1 Thus, it is respectfully submitted that by virtue of the Receiver’s “standing in the shoes of the
2 Borrowers”, both as a matter of law and under the terms of the Loan Documents, he did not in any
3 manner affect Celtic Bank’s security interest and superior rights in the Cash Collateral and Accounts.

4 Constitutional concerns also would exist were the Receiver’s position to be adopted. See *infra*.

5 **2.2. Receiver’s Contention 2: The Receiver Had a Right to the Pledged Cash Collateral By**
6 **Virtue of the Preliminary Injunction. (Receiver’s Objection to Claim, Dkt. No. 191)**

7 It is respectfully submitted that nowhere in the Preliminary Injunction was the Receiver given the
8 power to void a secured creditors’ perfected security interests. It is respectfully submitted that the
9 Receiver’s position defies logic. If the Receiver’s position were adopted, all lenders who held property
10 rights in the form of perfected security interests in collateral would have those perfected interests
11 voided once a Receiver was appointed and a preliminary injunction entered.

12 In this regard, it must be emphasized that creditors such as Celtic Bank were not even given notice
13 and an opportunity to be heard before the Preliminary Injunction was entered. If the Receiver’s
14 position were adopted, serious constitutional concerns would exist under the Fourth and Fifth
15 Amendments to the Constitution and concerns would also exist under F.R.C.P. 65. These concerns
16 also go to the second area of inquiry in the Court’s November 14, 2017 Order. It is respectfully
17 submitted that no such law or regulation could not withstand a Constitutional challenge.

18 Lastly, it is a fundamental principle in equity that injunctions are for the purpose of maintaining
19 the status quo until a determination on the merits can occur and, therefore, prohibitory in nature.²⁴
20 Were the Receiver’s position to be adopted, the Preliminary Injunction would have resulted in the
21 Injunction being mandatory in nature and mooted any opportunity for Celtic Bank to defend its claims
22 or protect its interests in the Cash Collateral.

23 ///

24

25

26

27

28

²⁴ See *Timbisha Shoshone Tribe v. Salazar* (E.D. Cal. 2010) 697 F.Supp.2d 1181, 1190; *Chalk v. United States Dist. Ct. Cent. Dist. of Calif.* (9th Cir. 1988) 840 F2d 701, 704; *Six Clinics Holding Corp., II v. Cafcomp Systems, Inc.* (6th Cir. 1997) 119 F3d 393, 400.

1 **2.3. Receiver’s Contention 3: Celtic Bank Lost Its Perfected Interest By Complying With**
2 **the Court’s June 6, 2016 Order as Amended and Turning of the Pledged Cash**
3 **Collateral to the Receiver (Receiver’s Reply, Dkt. No. 195 at pp. 6-7).**

4 The Receiver’s disingenuous contention that Celtic Bank lost its perfected security interest when
5 it complied with the Court’s June 6, 2016 order is without merit.

6 A Court in a receivership proceeding has broad discretion to fashion orders to protect the interests
7 and rights of interested parties.²⁵ It is respectfully submitted that the June 6, 2016 Order as amended,²⁶
8 mandated that Celtic Bank’s claim to a superior interest in the Cash Collateral be maintained despite
9 the Bank’s compliance with that order. It also must be emphasized that the Receiver’s position that
10 Celtic Bank’s compliance with the June 6, 2016 Order terminated its security interest is contrary to the
11 terms of the Loan Documents which provide Celtic Bank with the right to maintain its perfected
12 security interest despite changing the location where the Cash Collateral was to be held.²⁷

13 Just as importantly, it is respectfully submitted that the Receiver is estopped from claiming that
14 Celtic Bank lost its security interest merely because it complied with the June 6, 2016 Order, the terms
15 of which were proposed by the Receiver - i.e. that the Cash Collateral would be held by the Receiver,
16 as a Court appointed fiduciary, “*in trust in a separate account pending a final determination of who
has a right to such property.*”²⁸

17 It also should be noted that shortly before the June 6, 2016 hearing, the Receiver in its Opposition
18 to Celtic Bank’s Motion to Intervene²⁹ also took the position that Celtic Bank’s perfected security
19 interest in the Cash Collateral would be protected even if it complied with the Receiver’s demand to
20 turn over until there was a final determination of Celtic Bank’s claim.

21 It is only because of these assurances by the Receiver that Celtic Bank did not oppose the entry of
22 the June 6, 2016 Order.³⁰ Indeed, to further evidence the intention to protect Celtic Bank’s interests,

23
24
25
26
27
28

²⁵ See *S.E.C. v. Capital Consultants, LLC* (9th Cir 2005) 397 F. 3d. 733, 738.

²⁶ Dkt. Nos. 83 and 94.

²⁷ See Commercial Security Agreement, Exhibits C and G to Supplemental Zern Declaration, at p. 2.

²⁸ Addendum to June 6, 2016 Order, Dkt. No. 94.

²⁹ Dkt. No. 62.

³⁰ See Supplemental Zern Declaration at para. 7.

1 the Receiver went so far as to stipulate to the entry of the June 22, 2016 Amendment to the June 6,
2 2016 Order.³¹

3 It is respectfully submitted that by taking the positions noted above, the Receiver has waived any
4 claim and is estopped from asserting, that Celtic Bank has lost its right to the proceeds.

5 “[W]here a party assumes a certain position in a legal proceeding, and succeeds in
6 maintaining that position, he may not thereafter, simply because his interests have
7 changed, assume a contrary position, especially if it be to the prejudice of the party
8 who has acquiesced in the position formerly taken by him.”³²

9 Unless manifest injustice would result, a stipulation “is controlling on the parties and
10 the court is bound to enforce it.”³³

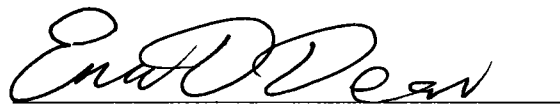
11 It is respectfully submitted that this contention by the Receiver is also without foundation and
12 smacks of bad faith.

13 **CONCLUSION**

14 It is respectfully requested that the Receiver’s Motion be denied, that Celtic Bank’s Claim be
15 approved and that the Receiver be ordered to turn over all funds currently held in trust to Celtic Bank.

16 DATED: November 22, 2017

FITZGERALD YAP KREDITOR LLP

17 

18 Eric D. Dean
19 Attorneys for Secured Creditor Celtic Bank
20 Corporation

21
22
23
24
25
26
27 ³¹ Dkt. No. 94.

³² *New Hampshire v. Maine* (2001) 532 U.S. 742, 749 – 751.

28 ³³ *Richardson v. Director, Office of Workers’ Comp. Programs* (4th Cir. 1996) 94 F3d 164, 167; *Quest Med., Inc. v. Apprill* (5th Cir. 1996) 90 F3d 1080, 1087.

CERTIFICATE OF SERVICE

Securities and Exchange Commission v. Robert Yang, et al.
U.S.D.C., Central District of California Case No.: 15-cv-02387-SVW-KK

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 November 22, 2017, I served the foregoing document(s) described as:

SUPPLEMENTAL OPPOSITION TO RECEIVER’S MOTION RE OBJECTION TO CLAIM OF CELTIC BANK CORPORATION PURSUANT TO THE COURT’S ORDER OF NOVEMBER 14, 2017

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:

- **Zachary T. Carlyle**
carlylez@sec.gov, kasperg@sec.gov, karpeli@sec.gov, blomgrene@sec.gov, pinkstonm@sec.gov, NesvigN@sec.gov
- **Eric David Dean**
edean@fyklaw.com
- **Stephen J. Donell**
jdelcastillo@allenmatkins.com
- **Mark T. Hiraide**
mth@msk.com, kjue@phlcorplaw.com, bag@msk.com, hitabashi@phlcorplaw.com, eganous@phlcorplaw.com

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

- **Leslie J. Hughes**
HughesLJ@sec.gov, kasperg@sec.gov, pinkstonm@sec.gov, nesvign@sec.gov
- **David J. Van Havermaat**
vanhavermaatd@sec.gov, LAROFiling@sec.gov, longoa@sec.gov, irwinma@sec.gov
- **David R. Zaro**
dzaro@allenmatkins.com, mdiaz@allenmatkins.com
- **Melissa Katherine Zonne**
mzonne@allenmatkins.com, mlyons@allenmatkins.com
- **Joshua Andrew del Castillo**
jdelcastillo@allenmatkins.com, mdiaz@allenmatkins.com

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