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8 STEPHEN J. DONELL

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 ROBERT YANG; et al.,

16 Defendants.

17 and

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

19 Relief Defendants.  
20  
21

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

**SUPPLEMENTAL RESPONSE TO  
CELTIC BANK CORPORATION'S  
SUPPLEMENTAL OPPOSITION TO  
RECEIVER'S MOTION RE  
OBJECTION TO CLAIM OF  
CELTIC PURSUANT TO THE  
COURT'S ORDER OF NOVEMBER  
14, 2017 [Dkt. No. 191/Dkt. No.  
198/Dkt. No. 201]**

Date: December 11, 2017

Time: 1:30 p.m.

Ctrm: 10A

Judge: Hon. Stephen V. Wilson

22 Pursuant to this Court's November 14, 2017 Minute Order [Dkt. No. 198],  
23 Stephen J. Donell (the "Receiver"), the Court-appointed receiver for Defendants  
24 Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and  
25 their respective subsidiaries and affiliates (collectively, the "Receivership Entities"),  
26 hereby submits the following supplemental Response to Celtic Bank's Supplemental  
27 Opposition to Receiver's Motion Re Objection to Claim of Celtic Bank Corporation  
28 Pursuant to the Court's for Order of November 14, 2017 [Dkt. Nos. 201, 202].

1 **I. SUMMARY OF ARGUMENT.**

2 Pursuant to this Court's order appointing the Receiver (the "Appointment  
3 Order"), the Receiver is charged with marshalling the assets of the receivership  
4 estate for the benefit of all of the defrauded investors and creditors. As part of the  
5 claims process, the Receiver has repeatedly requested that Celtic Bank Corporation  
6 ("Celtic") provide him with the evidence and law to substantiate its claim to  
7 \$2 million in cash that the Receiver sought to withdraw from two deposit accounts  
8 (the "Accounts") maintained at Celtic Bank, in accordance with his rights and duties  
9 under the Appointment Order, and his right as a depositor. When Celtic failed to  
10 provide the requested support for its claim, the Receiver filed his objection to  
11 Celtic's claim. The Court has also challenged Celtic to provide legal support for its  
12 claim and, once again, Celtic has failed to produce any statutory law or legal  
13 precedent to support its claim that it is entitled to the return of the \$2 million.  
14 Instead of responding directly to the questions presented in the Court's Minute  
15 Order, or citing to statutes or cases governing secured transactions and bank  
16 regulations, Celtic has relied upon and directed the Court to a section of Witkin's  
17 Summary of California Law which describes the history of secured transactions  
18 *before* 1965, the year when California adopted the Uniform Commercial Code.

19 Celtic's ambiguous responses to this Court's direct questions suggest an intent  
20 to divert attention from the law governing secured transactions and deposit accounts,  
21 and to advance the vague narrative that, read together, Celtic's loan documents  
22 restricted the Receiver's ability to withdraw funds from the Accounts, thereby  
23 preserving its security interest. Yet nothing in Celtic's papers suggests the existence  
24 of a control agreement or formal withdrawal restriction in the loan documents.

25 In the end, the rights of the parties to the \$2 million should be determined by  
26 an application of the Commercial Code and the Code of Federal Regulations, both  
27 of which militate in the Receiver's favor. The rule is simple: the Receiver, standing  
28 in the shoes of the depositors, had the absolute right to withdraw the money. 12

1 C.F.R. § 229.10. Upon his withdrawal of the money from the Accounts, Celtic lost  
2 the ability to enforce its security interest against the money. Cal. Comm. Code  
3 §§ 9312, 9314. Accordingly, Celtic's claim must be denied.

4 **II. SPECIFIC RESPONSES TO ISSUES PRESENTED IN CELTIC'S**  
5 **SUPPLEMENTAL BRIEF.**

6 **A. Celtic's Loan Documents Do Not Support Its Claim.**

7 The Receiver does not dispute that Celtic's loan documents gave rise to a  
8 security interest in the two Accounts. The Receiver does, however, dispute Celtic's  
9 unfounded description of the loan documents and their meaning.<sup>1</sup> Nothing in the  
10 loan documents suggests that Celtic took any action, before or after the Receiver  
11 was appointed, to enforce its security interest. Nor does Celtic dispute that the  
12 Receiver's withdrawal is exactly the type of intervening act that would result in the  
13 money in the Accounts being rendered unavailable to satisfy the security.

14 More importantly, in response to the Court's direct request to, "highlight or  
15 otherwise draw the Court's attention to the specific provisions they [Celtic] are  
16 relying upon," Celtic does not present a single document or contract term to show  
17 that Celtic had the right to hold the money in the Accounts in the face of the  
18 Receiver's demand to withdraw the money.<sup>2</sup> Most notable is Celtic's failure to  
19 present a control agreement, or an agreement governing the certificates of deposit  
20 that comprised the Accounts and that gave Celtic the right to hold the money in the  
21 Accounts in the face of its depositors' request to withdraw the money. The sections  
22 of the loan documents referenced by Celtic simply reflect its security interest in the  
23 "Accounts." The documents give Celtic a security interest in "Collateral" and  
24

25 <sup>1</sup> Accordingly, the Receiver objects to the contents of the Supplemental Declaration of Brian  
26 Zern [Dkt. No. 202] among other things, to the extent that it presents statements of opinion and  
27 legal conclusions as facts, and misrepresents other facts, including in connection with the  
28 Receiver's initial request for the turnover of the funds held in the Accounts.

<sup>2</sup> Again, the Receiver does not dispute that Celtic could have acted to enforce its security  
interest, in both the pre- and post-receivership periods. However, Celtic failed to do so and a  
unilateral refusal to permit the withdrawal of funds in violation of federal and state law,  
without a contemporaneous enforcement effort, should not be countenanced by the Court.

1 "Collateral" is defined as a "deposit account."<sup>3</sup> The documents *never* describe the  
2 "Collateral" as "cash collateral," a term Celtic has used throughout these  
3 proceedings in an effort to persuade the Court that Celtic has an interest in the  
4 money itself, as opposed to the Accounts.

5 **B. The Receiver, Standing In The Depositors' Shoes, Had The Right**  
6 **To Withdraw The Money In The Accounts.**

7 Celtic does not refute the applicable law concerning the Receiver's right to  
8 withdraw the money from the Accounts, nor the law regarding the impact of a cash  
9 withdrawal on Celtic's security interest. Instead, Celtic appears to be suggesting that  
10 the Court should ignore the applicable sections of the Commercial Code and the  
11 Code of Federal Regulations cited by the Receiver and look to the law as it was  
12 *before* California adopted the Uniform Commercial Code. For instance, as a preface  
13 to the Witkin section cited by Celtic, its authors note, "the California statutes dealing  
14 with these transactions [pledges] were repealed upon adoption of the Code..." in  
15 1965. 4 Witkin, Summary of California Law, §§ 1, 17-21, pp. 567, 586-591.

16 The California Commercial Code and Code of Federal Regulations gave the  
17 Receiver the unfettered right to withdraw the money from the Accounts and, upon  
18 doing so, the money became unavailable to satisfy Celtic's security interest.

19 **C. The Court's Appointment Order Is The Operative Order, Given**  
20 **That It Called For The Turnover Of Receivership Assets.**

21 Celtic makes vague references to the Fourth and Fifth Amendments of the  
22 United States Constitution as a reason for the Court to find that the Appointment  
23 Order did not require them to turn over the money in the Accounts or that, in doing  
24 so, Celtic's security interest was preserved, yet Celtic does not specifically explain  
25 the application of the Constitution to this circumstance. Among other things, the  
26 Appointment Order directs those holding assets owned by the Receivership Entities  
27

28 <sup>3</sup> In addition, and as noted in the Receiver's prior submissions, Celtic only obtained an  
Assignment of one of the Accounts, not both.

1 to return those assets to the Receiver. An order enabling the Receiver to marshal  
2 Receivership Entity assets does not implicate the Constitution, because it does not  
3 alter the status quo.

4 Here, the status quo was as follows: the Receivership Entities owned the  
5 money in the deposit Accounts and had the absolute right to withdraw the money.  
6 Prior to the Receiver's appointment, as Celtic contends, there was no default on the  
7 loans. As such, by the terms of its own agreements, Celtic had no right to foreclose  
8 on the money in the Accounts prior to the Receiver's Appointment.

9 Given that the Appointment Order (not the order on the Receiver's application  
10 for an order to show cause) vested the Receiver with right to withdraw money from  
11 the Accounts, Celtic's protestation that the Receiver's arguments are disingenuous is  
12 misplaced. The Receiver simply maintains that, by virtue of his appointment, he  
13 stepped into the shoes of the Receivership Entities and, as such, had the right to  
14 withdraw the money from the Accounts. That such a withdrawal has implications  
15 for Celtic's security interest is not a direct result of the Appointment Order, but  
16 merely a result of the circumstances that the parties were in at the time of the  
17 Receiver's appointment.

18 Moreover, this Court may ignore the impact of the turnover provisions of the  
19 Appointment Order and rule solely based upon the Receiver's rights as a depositor  
20 of money with the right to withdraw money from the Accounts. In other words, the  
21 Receiver made a legitimate withdrawal request, at which point Celtic lost control of  
22 the money in the Accounts, meaning the money was no longer available to satisfy its  
23 security interest. The Receiver is not estopped from making this, or any, argument,  
24 just as Celtic is not estopped from arguing in favor of its claim.

25 **III. CONCLUSION.**

26 For the foregoing reasons, the Receiver respectfully requests that the Court  
27 accept and authorize his recommended treatment of claims, including the denial of  
28 the Celtic claim.

1 Dated: November 29, 2017

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By:           /s/          David R. Zaro          

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**PROOF OF SERVICE**

*Securities and Exchange Commission v. Robert Yang, Suncor Fontana, et al.*  
USDC, Central District of California – Case No. 5:15-cv-02387-SVW (KKx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 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:

**SUPPLEMENTAL RESPONSE TO CELTIC BANK CORPORATION'S  
SUPPLEMENTAL OPPOSITION TO RECEIVER'S MOTION RE  
OBJECTION TO CLAIM OF CELTIC PURSUANT TO THE  
COURT'S ORDER OF NOVEMBER 14, 2017 [Dkt. No. 191/Dkt. No.  
198/Dkt. No. 201]**

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 **November 29, 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**  
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On November 29, 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 **November 29, 2017** at Los Angeles, California.

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