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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 ROBERT YANG, et al.,

22 Defendants,

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

24 Relief Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
FIFTH INTERIM APPLICATION
FOR PAYMENT OF FEES AND
REIMBURSEMENT OF EXPENSES
OF RECEIVER AND HIS
PROFESSIONALS**

[Notice of Application for Payment of
Fees and Reimbursement of Expenses and
Motion for Approval; Fifth Interim
Application of Receiver and His
Professionals; Declaration of Stephen J.
Donell; and [Proposed] Order submitted
concurrently herewith]

Date: January 29, 2018
Time: 1:30 p.m.
Ctrm: 10A
Judge: Hon. Stephen V. Wilson

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

This Court appointed Stephen J. Donell (the "Receiver") as the permanent receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the

1 "Receivership Entities") on December 11, 2015, pursuant to its Preliminary
 2 Injunction, Order Appointing Receiver, Freezing Assets, and Providing for Other
 3 Ancillary Relief (the "Appointment Order").

4 Since his appointment, the Receiver has, with assistance from his counsel of
 5 record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"),
 6 diligently carried out his duties in accordance with the Court's Orders, including the
 7 Appointment Order and the Court's March 8, 2016 Order in Aid of Receivership.
 8 Pursuant to Article V(P) of the Appointment Order, the Receiver and Allen Matkins
 9 now hereby submit their respective Fifth Interim Application for Payment of Fees
 10 and Reimbursement of Expenses (the "Application"), for fees and expenses incurred
 11 by the Receiver and his professionals from the period of January 1, 2017 through
 12 March 31, 2017 (the "Application Period"). Pursuant to the Application, the
 13 Receiver and Allen Matkins seek approval of all of their respective fees and
 14 expenses incurred during the Application Period, as follows:

<u>Applicant</u>	<u>Current Fees</u>	<u>Current Expenses</u>	<u>Total Amount Requested for Approval</u>
Receiver	\$44,446.70	\$417.46	\$44,864.16
Allen Matkins	\$86,994.70	\$359.68	\$87,354.38
<u>TOTAL:</u>	\$131,441.40	\$777.14	\$132,218.54

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 20 Pursuant to the Application, the Receiver seeks authorization to pay himself
 21 90% of the approved fees and 100% of the approved expenses from the assets of the
 22 Receivership Entities, on an interim basis. Additionally, the Receiver seeks
 23 authorization to pay Allen Matkins 80% of the approved fees and 100% of the
 24 approved expenses from the assets of the Receivership Entities, on an interim basis.
 25 The respective amounts of fees and expenses incurred from January 1, 2017 through
 26 March 31, 2017 that are currently requested for payment are as follows:
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<u>Applicant</u>	<u>Current Fees Requested for Payment</u>	<u>Current Expenses Requested for Payment</u>	<u>Total Amount Requested for Payment</u>
Receiver	\$40,002.03	\$417.46	\$40,419.49
Allen Matkins	\$69,595.76	\$359.68	\$69,955.44
<u>TOTAL:</u>	\$109,597.79	\$777.14	\$110,374.93

The remainder (or "holdback") of these fees and expenses will be requested for payment at the conclusion of this receivership. As reflected herein, and in the concurrently submitted supporting Declaration of Stephen J. Donell ("Donell Decl."), the Receiver has determined, in his reasonable business judgment, that the fees and expenses incurred by the Receiver and Allen Matkins during the Application Period, are appropriate, inured to the benefit of the Receivership Entities, and should now be approved and paid from the assets of the Receivership Entities.

II. RELEVANT FACTUAL BACKGROUND.

While a full recitation of the procedural history of this matter is unnecessary for the purposes of the Application, and is presented completely in the Receiver's December 23, 2015 Initial Report Re: Marshaling and Preservation of Receivership Assets, and Petition for Further Instructions (the "Initial Report"), the April 18, 2016 First Quarterly Status Report (the "Interim Report"), the August 15, 2016 Second Quarterly Status Report ("Second Interim Report"), the January 9, 2017 Third Quarterly Status Report ("Third Interim Report"), and the May 25, 2017 Fourth Quarterly Status Report ("Fourth Interim Report") each of which summarize the efforts of the Receiver and his professionals¹ since the commencement of the instant receivership. The facts most relevant to the Application are as follows:

¹ Allen Matkins is occasionally referred to herein as the Receiver's "professionals."
 MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT OF FEE
 APPLICATION

1 The above-captioned enforcement action commenced with the plaintiff
2 Securities and Exchange Commission's (the "Commission") Complaint (the
3 "Complaint"), filed on November 19, 2015, against Defendants Robert Yang,
4 Claudia Kano, the Receivership Entities, and certain relief defendants. (See Dkt.
5 No. 1.) In its Complaint, the Commission alleged that the Defendants had
6 committed securities fraud using the Receivership Entities as a means of
7 fraudulently raising \$20 million from foreign investors in connection with the
8 United States Customs and Immigration Service EB-5 investment and immigration
9 program. (Id.) The Court appointed the Receiver as a permanent receiver and
10 entered the Appointment Order on December 11, 2015. (See Dkt. No. 18.)

11 The Receiver filed his Initial Report on December 23, 2015. (See Dkt.
12 No. 20.) On March 8, 2016, the Court entered its Order in Aid of Receivership,
13 clarifying certain administrative matters and providing the Receiver with specific
14 authority regarding communications with Receivership Entity investors, providing
15 for the protection of private information, and granting the Receiver authority to
16 abandon receivership estate assets he determines are "underwater" or represent a net
17 loss or liability to the Receivership Entities. (See Dkt. No. 46.) The Receiver filed
18 his Interim Report, which included a Forensic Accounting Report, on April 18,
19 2016. (See Dkt. Nos. 53, 53-2.) He submitted an Amended Forensic Accounting
20 Report to the Court on May 20, 2016. (See Dkt. Nos. 69, 69-1.) The Receiver filed
21 his Second Interim Report on August 15, 2016. (See Dkt. No. 129.) The Receiver
22 filed his Third Interim Report on January 9, 2017. (See Dkt. No. 150.) The
23 Receiver filed his Fourth Interim Report on May 25, 2017. (See Dkt. No. 174.)

24 As reflected in the Initial Report, the Interim Report, the Second Interim
25 Report, the Third Interim Report, the Fourth Interim Report, and in materials filed
26 concurrently herewith, since his appointment as Receiver, and despite facing
27 significant challenges including the production of incomplete and inaccurate records
28 and information by Defendants, interference by would-be creditors, and the

1 complexity of the Entities' business and financial activities, the Receiver has, among
2 other things:

- 3 • Continued to administer the estates of the Receivership Entities
4 (collectively, the "Estate"), funded via approximately \$2.43 million in
5 cash recoveries;
- 6 • Confirmed the amount and location of millions in cash assets
7 potentially available for recovery and subject to turn-over requirements
8 of the Appointment Order, in the form of approximately \$2.5 million in
9 cash deposits (\$2.4 million of which have been turned over, with
10 further proceedings pending as to \$2 million of this total) and \$250,000
11 in investor funds paid to the Metropolitan Water District of Southern
12 California in the pre-receivership period;
- 13 • Negotiated and entered into a tentative settlement (later approved by
14 the Court, see Dkt. No. 170) with the Metropolitan Water District of
15 Southern California (the "MWD") in connection with \$250,000 in
16 funds paid by the Receivership Entities in the pre-receivership period in
17 a failed real estate transaction;
- 18 • Secured the turn-over of \$2 million of the above-referenced cash
19 deposits from Celtic Bank Corporation ("Celtic Bank"), which funds
20 the Receiver is holding in a separate account pending a Court
21 determination regarding competing claims to these funds;
- 22 • Continued to develop and undertake a marketing and disposition plan
23 in connection with each of the real properties implicated in this matter,
24 including via the engagement of real property brokers and the
25 commencement of marketing efforts for all saleable properties;
- 26 • Coordinated with Celtic Bank and with GBC International Bank ("GBC
27 Bank") regarding the abandonment of two of the real properties
28 implicated in this matter;

- 1 • Identified two real properties determined to be "underwater," and
2 subject to immediate abandonment, and prepared and filed a motion for
3 authority to complete an abandonment of those properties, ultimately
4 resulting in the Court-approved abandonment of these properties during
5 Application Period;
- 6 • Negotiated with prospective buyers regarding the Entities' remaining
7 real estate assets, which sales the Receiver anticipates submitting for
8 Court approval shortly; namely, the real property and improvement
9 located at 3599 Norton Avenue, Lynwood, California 90262 (the
10 "Lynwood Project") (See Dkt. No. 182);
- 11 • Developed a claims process, filed a motion seeking Court approval of
12 the proposed claims process and secured such approval;
- 13 • Prepared and submitted his Fourth Quarterly Status Report;
- 14 • Continued to monitor and participate in all pending state court litigation
15 matters affecting or relating to the Receivership Entities, and
16 maintained the status quo in such matters; and
- 17 • Communicated with investors (and counsel for investors) in the
18 Receivership Entities regarding the status of the receivership, issues
19 relating to investor immigration petitions, and registration via the
20 Receiver's website.

21 (See Donell Decl. ¶ 2.)

22 **III. ARGUMENT.**

23 **A. The Application Is Reasonable And Appropriate, And Payment** 24 **Should Be Authorized.**

25 "As a general rule, the expenses and fees of a receivership are a charge upon
26 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).
27 These expenses include the fees and expenses of the Receiver and his professionals.
28 Decisions regarding the timing and amount of an award of fees and costs to the

1 Receiver and his professionals are committed to the sound discretion of the Court.
2 See SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other
3 grounds, 998 F.2d 922 (11th Cir. 1993)).

4 1. The Fees and Expenses Requested in the Application are
5 Reasonable.

6 In determining the reasonableness of fees and expenses requested in this
7 context, the Court should consider the time records presented, the quality of the
8 work performed, the complexity of the problems faced, and the benefit of the
9 services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc.,
10 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973); see also Southwestern Media, Inc. v. Rau,
11 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by statute as stated
12 in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP 2011)).

13 Here, the Application describes the nature of the services that have been
14 rendered, and, where appropriate, the identity and billing rate of the individual(s)
15 performing each task. The Receiver and Allen Matkins have endeavored to staff
16 matters as efficiently as possible in light of the level of experience required and the
17 complexity of the issues presented.

18 Moreover, the Receiver and Allen Matkins seek payment, on an interim basis,
19 of only a percentage of the fees and costs incurred, in recognition of the fact that the
20 work on this matter is ongoing. Specifically, the Receiver seeks payment of 90% of
21 discounted fees incurred during the Application Period, in the amount of
22 \$40,002.03, plus 100% of its expenses, totaling \$417.46. Allen Matkins seeks
23 payment of 80% of its discounted fees incurred during the Application Period,
24 totaling \$69,595.76, plus 100% of its expenses, totaling \$359.68. Payment of the
25 proposed 10% and 20% holdbacks, respectively, will be sought at the conclusion of
26 the receivership, and will be subject to Court approval. In general, the Application
27 reflects the Receiver's and Allen Matkins' customary billing rates and the rates
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1 charged for comparable services in other matters, less any discounts or reductions
2 specifically identified.²

3 The Receiver has reviewed the Application, and believes the fee and expense
4 requests to be fair and reasonable, and an accurate representation of the work
5 performed for the benefit of the Receivership Entities. (See Donell Decl. ¶ 3-4.)
6 The Receiver has likewise determined that the Estate has actually benefited from the
7 services. (Id.)

8 2. The Fees and Expenses Requested in the Fifth Fee Application
9 have been Submitted to the Commission, Without Objection.

10 Courts give great weight to the judgment and experience of the Commission
11 relating to receiver compensation. "[I]t is proper to [keep] in mind that the
12 [Commission] is about the only wholly disinterested party in [this] proceeding and
13 that ... its experience has made it thoroughly familiar with the general attitude of the
14 Courts and the amounts of allowances made in scores of comparable proceedings."
15 In re Philadelphia & Reading Coal & Iron Co., 61 F.Supp. 120, 124 (D.C. Pa. 1945)
16 ("In re Philadelphia"). Indeed, the Commission's perspectives are not "mere casual
17 conjectures, but are recommendations based on closer study than a district judge
18 could ordinarily give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d
19 Cir. 1950) (internal quotation marks omitted). In fact, "recommendations as to fees
20 of the [Commission] may be the only solution to the 'very undesirable subjectivity
21 with variations according to the particular judge under particular circumstances'
22 which has made the fixing of fees seem often to be 'upon nothing more than an ipse
23 dixit basis.'" Id. Thus, the Commission's perspective on the matter should indeed

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27 ² As reflected in the Application, the Receiver and Allen Matkins have conferred
28 with the Commission regarding the amounts requested in the Application, as
required by the Appointment Order. All three parties have provided discounts
and write-offs over and above the discounts to which they committed at the
inception of this receivership.

1 by given "great weight," as observed by the court in Fifth Avenue Coach Lines, Inc.,
2 364 F. Supp. at 1222.

3 In order to ensure that the fees and expenses requested in the Application are
4 appropriate, and in compliance with the terms of the Appointment Order, the
5 Receiver and Allen Matkins submitted their respective invoices to the Commission
6 for review. The Commission met and conferred with the Receiver regarding the
7 Application. After delaying the submission of the Application at the Commission's
8 request to address a handful of outstanding questions, the Receiver and Allen
9 Matkins agreed to additional discounts over and above the across-the-board
10 discounts they are already applying to their work on this matter, and successfully
11 addressed all outstanding issues identified by the Commission. Accordingly, the
12 Application has been diligently vetted by the Commission, which has indicated that
13 it does not object to the requested fees and expenses.

14 The Commission's position merits significant deference. As the In re
15 Philadelphia court observed, the Commission is "thoroughly familiar with ... the
16 amounts of allowances made in scores of comparable proceedings." In re
17 Philadelphia, 61 F.Supp. at 124. Indeed, the Commission is likely in the best
18 position to measure the fees and costs requested here against those incurred in other,
19 similar proceedings, and cases of similar complexity. The Receiver and his
20 Professionals thus respectfully request that the Court approve all requested fees and
21 expenses reflected in the Application, and authorize the payment of the requested
22 amounts, on an interim basis.

23 **B. The Receiver Should Be Authorized To Pay Allowed Fees And**
24 **Expenses From Cash On Hand.**

25 The Receiver presently holds approximately \$5.9 million for the benefit of the
26 Receivership Entities, inclusive of a recent, Court-approved payment of \$1.6 million
27 to Celtic Bank. (See Donell Decl. ¶ 6.) In the aggregate, the Receiver holds funds
28 well in excess of those requested in the Application, and the Receiver respectfully

1 requests the Court's permission to pay requested fees and costs from the cash on
2 hand and available from the accounts of the Receivership Entities.

3 **IV. CONCLUSION.**

4 The Receiver and Allen Matkins therefore respectfully request that this Court
5 enter an Order:

- 6 1. Approving the Receiver's discounted fees, in the amount of
7 \$44,446.70, and expenses, in the amount of \$417.46;
- 8 2. Approving Allen Matkins' discounted fees, in the amount of
9 \$86,994.70, and expenses, in the amount of \$359.68;
- 10 3. Authorizing and directing the Receiver to pay himself 90% of
11 their approved fees (\$40,002.03) and 100% of approved expenses (\$417.46),
12 for a total of \$40,419.49, from the assets of the Receivership Entities, on an
13 interim basis; and
- 14 4. Authorizing and directing the Receiver to pay Allen Matkins
15 80% of approved fees (\$69,595.76) and 100% of approved expenses
16 (\$359.68), for a total of \$69,955.44, from the assets of the Receivership
17 Entities, on an interim basis.

18
19 Dated: December 19, 2017

ALLEN MATKINS LECK GAMBLE
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DAVID R. ZARO
JOSHUA A. DEL CASTILLO
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22 By: /s/ Joshua A. del Castillo

JOSHUA A. DEL CASTILLO
Attorneys for Receiver
STEPHEN J. DONELL

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:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FIFTH INTERIM APPLICATION FOR PAYMENTS OF FEES AND REIMBURSEMENT OF EXPENSES OF RECEIVER AND HIS PROFESSIONALS

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 **December 19, 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:

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- **David R Zaro**
dzaro@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **December 19, 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 **December 19, 2017** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz