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 8 STEPHEN J. DONELL

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

16 ROBERT YANG; et al.,

17 Defendants.

18 and

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

20 Relief Defendants.

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

INITIAL REPORT OF RECEIVER,
 STEPHEN J. DONELL, RE:
 MARSHALING AND PRESERVATION
 OF RECEIVERSHIP ASSETS, AND
 PETITION FOR FURTHER
 INSTRUCTIONS

[Notice of Filing submitted concurrently
 herewith]

Date: January 25, 2016
 Time: 1:30 p.m.
 Ctrm: 6
 Judge: Hon. Stephen V. Wilson

21 **TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THIS**
 22 **HONORABLE COURT:**

23 In accordance with this Court's December 11, 2015 Preliminary Injunction,
 24 Order Appointing Receiver, Freezing Assets, and Providing for Other Ancillary
 25 Relief (the "Appointment Order") and Local Rules 66-7(d) and 6-1, Stephen J.
 26 Donell, the Court-appointed Receiver for Defendants Suncor Fontana, LLC, Suncor
 27 Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and
 28 affiliates (collectively, the "Receivership Entities") hereby submits the following

1 Initial Report re: Marshaling and Preservation of Receivership Assets, and Petition
2 for Further Instructions (the "Initial Report"):

3 **I. SUMMARY OF IDENTIFIED ASSETS.**

4 While, as detailed below, the Receiver has not yet recovered and reviewed all
5 of the documents necessary to confidently identify each and every asset of the
6 Receivership Entities ("Receivership Assets") or develop a comprehensive
7 understanding of the business and financial activities of the Entities, those materials
8 that he has secured and reviewed as of the date of this Initial Report¹ suggest that the
9 Receivership Assets principally consist of:

- 10 • The books and records, including financial and business records, of the
11 Receivership Entities;
- 12 • Cash in bank accounts frozen in accordance with this Court's prior
13 Orders;
- 14 • The real property associated with Defendant Suncor Hesperia , LLC
15 (the "Hesperia Project"), currently a piece of partially undeveloped land
16 apparently intended to be developed as a skilled nursing facility;
- 17 • The real property associated with Defendant Suncor Fontana, LLC (the
18 "Fontana Project"), a skilled nursing facility currently under
19 construction and which appears to be approximately 45% complete;
- 20 • The real property associated with Defendant Suncor Care Lynwood,
21 LLC (the "Lynwood Project"), currently a vacant structure previously
22 used as a skilled nursing facility, and apparently intended to be
23 refurbished and reopened as another one;

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25
26
27 ¹ Any conclusions presented in this Initial Report are preliminary and subject to
28 later revision as the Receiver learns more about the business and financial
activities of the Receivership Entities, the nature and character of Receivership
Assets, and

- 1 • An interest in and claims against the assets of the Relief Defendants to
2 this action arising from the transfers of Receivership Assets to such
3 Relief Defendants in the pre-receivership period;
- 4 • Claims against third parties associated with the improper transfer of
5 Receivership Assets to such parties in the pre-receivership period,
6 including with the purchase of the real property housing Defendant
7 Yang's medical practice and other real property in Mentone, California;
8 and
- 9 • Claims against third parties arising in connection with contractual and
10 other relations concerning the Fontana, Hesperia, and Lynwood
11 Projects.

12 **II. RELEVANT PROCEDURAL HISTORY.**

13 The Receiver invites the Court and all interested parties to review the
14 following documents for a general summary of the relevant facts underlying the
15 above-captioned case, the facts relevant to the instant receivership, and the
16 Receiver's appointment:

- 17 • Securities and Exchange Commission's (the "Commission") Complaint,
18 filed on November 19, 2015 (Docket No. 1);
- 19 • Commission's Ex Parte Application for Temporary Restraining Order,
20 filed on November 19, 2015 (Docket Nos. 4, 5);
- 21 • Temporary Restraining Order, entered by the Court on November 25,
22 2015 (Docket No. 14)
- 23 • Stipulation for Preliminary Injunction, filed on December 11, 2015
24 (Docket No. 17); and
- 25 • Appointment Order, entered by the Court on December 11, 2015
26 (Docket No. 18).

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1 **III. RECEIVER'S EFFORTS TO IDENTIFY, MARSHAL, AND**
2 **PRESERVE RECEIVERSHIP ASSETS.**

3 The Receiver's plan for identifying, marshaling, and preserving Receivership
4 Assets is as follows:

5 **A. Assertion Of Jurisdiction.**

6 1. Registration of Commission's Complaint and Appointment Order
7 and Recordation of Appointment Order.

8 The territorial jurisdiction of this Court – and thus of the Receiver – is
9 extended to any district of the United States where Receivership Assets are believed
10 to be, or may be, located. 28 U.S.C. § 754; see also Haile v. Henderson Nat'l Bank,
11 657 F.2d 816, 822 (6th Cir. 1981). Based on the limited information presently
12 available to the Receiver, and out of an abundance of caution, the Receiver has
13 submitted the SEC Complaint and Appointment Order for filing and registration
14 with United States District Courts for the Southern, Eastern, and Northern Districts
15 of California, in conformity with 28 U.S.C. § 754 and applicable federal law. As
16 additional Receivership Assets are located, the Receiver may file/register the SEC
17 Complaint and Appointment Order in other districts as well. As of the date of
18 submission of this Initial Report, the Receiver will also have caused the
19 Appointment Order to be recorded in all California counties where Receivership
20 Assets are believed to be located.

21 2. Notification of Third Parties.

22 In addition to filing and registering the SEC Complaint and Appointment
23 Order, and in conformity with Section V of the Appointment Order, which
24 summarizes the Receiver's powers and duties, the Receiver has delivered, by email,
25 formal service, or other means, a copy of the Appointment Order to a number of the
26 Receivership Entities' actual and contemplated business partners, including lenders,
27 contractors, architects, and pre-receivership counsel.
28

1 3. Submission of Notices of Pending Receivership in Pre-
2 Receivership, State Court Litigation.

3 The Receiver has recently learned that, at the time of his appointment, there
4 were at least five (5) actions pending in the San Bernardino Superior Court that
5 directly implicate the Receivership Entities (including actions where the Entities
6 were parties) or Receivership Assets. Each of these actions is stayed in accordance
7 with Article V(J) of the Appointment Order. The Receiver is in the process of filing
8 and serving Notices of Pending Receivership in each of these matters, in order to
9 advise presiding courts of the stay, and will continue to submit such Notices in other
10 actions if and when they are discovered.²

11 **B. Recovery And Analysis Of Receivership Entity Books And**
12 **Records.**

13 1. Documents Received from Defendants or Defendant Affiliates.

14 The Appointment Order vests the Receiver with exclusive authority and
15 control over Receivership Assets, including books and records, and directs all
16 parties in receipt of the Appointment Order to turn-over to the Receiver,
17 immediately, all books, records, and other material relating to the business and
18 financial activities of the Receivership Entities.

19 At the time of his appointment, the Receiver anticipated that Defendants
20 Yang and Kano (hereinafter, "Defendants"), and the Relief Defendant entities with
21 which they are associated, would be the largest and best repository of such records.
22 Unfortunately, the Receiver was promptly advised by counsel for the Defendants
23 that all hard copy records had been transmitted to a third party vendor for digital
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25 ² Through counsel, the Receiver has requested that counsel for Defendants Yang
26 and Kano provide a list of all pending pre-receivership litigation. Unfortunately,
27 the list provided by Defendants' counsel was not as comprehensive as the list the
28 Receiver had already himself assembled from publicly available records. Accordingly, at this time, the Receiver is not certain that he has identified all relevant, pre-receivership litigation. The Receiver and his counsel will continue to review available public records and file Notices of Pending Receivership where appropriate.

1 duplication in connection with an outstanding document request from the
2 Commission.

3 This third party vendor, who was only very recently identified by Defendants,
4 produced all original, hard-copy materials in its possession to the Receiver on
5 December 17, 2015, only days before the submission of this Initial Report. This
6 production consisted principally of materials relating principally to the Projects,
7 including architectural plans, engineering reports, a business plan for the Fontana
8 Project, and similar materials. **Notably, this production, which Defendants**
9 **originally identified as the single largest repository of books and records**
10 **relating to the business and financial affairs of the Receivership Entities,**
11 **included few, if any, documents directly speaking to the nature, character, and**
12 **location (or transfer, as the Commission has alleged) of Receivership Assets,**
13 **particularly information relating to the solicitation, receipt, and disposition of**
14 **funds raised from Entity investors.** Specifically, this production did not include
15 any: (1) private placement memoranda or other offering materials; (2) LLC or
16 investment agreements; (3) investor files; (4) bank or other financial statements
17 reflecting the timing and amount of investment in the Projects; or (5) materials
18 reflecting communications with investors. The Defendants recently identified
19 additional materials previously not provided to their vendor and have committed to
20 producing these materials to the Receiver.

21 In addition to the above-referenced materials, the Receiver has also obtained
22 limited documents relating to an accounting of the business and financial activities
23 of Relief Defendant Yanrob's Medical, Inc. – an entity the Commission has alleged
24 was an unlawful recipient of Receivership Assets (in the form of funds raised from
25 Entity investors) – including Quick Books files and a limited number of bank
26 statements and other financial materials, including some bank statements for
27 Receivership Entities. As with the other production facilitated by the Defendants,
28 the accounting production does not appear to contain financial records complete

1 enough to confirm – or disconfirm – Yanrob's Medical, Inc.'s receipt and disposition
2 of investor funds, let alone arrive at any broader conclusions regarding the conduct
3 of the Receivership Entities.

4 The Receiver recently learned that the Defendants did not turn over all of
5 their books and records to the imaging vendor, as previously represented, and that
6 they maintained at least one computer for conducting their affairs. The Receiver is
7 consequently coordinating with Defendants' counsel to arrange for the turn-over of
8 all remaining hard copy records, along with the computer, which, by the time this
9 Initial Report is submitted, will have been be imaged by the Receiver's forensic
10 computing specialist.

11 Given the substantially limited nature of the documents obtained by the
12 Receiver to date, the Receiver is not confident that, in the aggregate, these materials
13 will yield a sufficiently comprehensive understanding of the business and financial
14 activities of the Receivership Entities, let alone their solicitation, receipt, and use of
15 investor funds, nor provide a complete understanding of the Defendants'
16 expectations for the Projects, their anticipated completion dates, and the business
17 plans for each. In short, the Receiver does not believe the materials he has obtained
18 to date are sufficient for identifying, marshaling, or preserving all (or most)
19 available Receivership Assets.

20 2. Third Party Document Requests and Productions.

21 As a consequence of the limited nature of the materials obtained to date, the
22 Receiver must seek to obtain additional – more comprehensive – materials for third
23 party sources. As of the date of this Report, the Receiver has submitted documents
24 requests in various forms to: (1) the Commission; (2) banks maintaining accounts in
25 the name of or for the Receivership Entities and the Relief Defendants; (3) the
26 subscription agent believed to have administered or supervised investments in the
27 Entities pursuant to the EB-5 investment and immigration program administered by
28 the United State Customs and Immigration Service; and (4) other third parties,

1 including escrow agencies, counsel for EB-5 investors, and Project lenders, believed
2 to be in possession of relevant documents or information.

3 The Receiver has submitted an access letter to the Commission, requesting
4 that it share with the Receiver all non-privileged information relating to the Entities
5 and Receivership Assets. A response from the Commission is expected to be
6 imminently forthcoming.

7 In addition, the Receiver has delivered demand letters to all banks has
8 identified as administering accounts in the name of or for the benefit of the
9 Receivership Entities and Relief Defendants, with formal subpoenas prepared and to
10 be served roughly contemporaneously with this Initial Report.

11 The Receiver has also sent a demand letter to Mason Investments LLC
12 ("Mason"), the subscription agent who apparently located investors on the Entities'
13 behalf, and has successfully served Mason's principal with a document subpoena
14 requiring the production of all information in Mason's possession relating to
15 investments in the Entities, including Mason's receipt of what has alleged to be over
16 \$5 million in potentially unlawful or otherwise improper fees and commissions.

17 The Receiver is presently in the process of causing document subpoenas to be
18 served on at least two (2) escrow service providers in connection with potential
19 investor funds still held in escrow and the prospective sale of (and proceeds from)
20 real property in Mentone, California, which property is believed to have been
21 purchased with Receivership Assets.

22 In addition, counsel for a number of the Entities' investors has provided the
23 Receiver with certain documents relating to the Entities' solicitation of investment,
24 including sample LLC agreements and private placement memoranda.

25 Finally, Celtic Bank, which made a construction loan in connection with and
26 secured by the Fontana Project, has produced to the Receiver a substantial number
27 of documents, including its file for the Project, the relevant construction loan
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1 agreement, copies of written and email communications relating to the Project, and
2 corporate resolutions for the relevant Entities.

3 While each of the above-referenced document productions have been helpful,
4 as indicated above, they are, individually and collectively, insufficient for the
5 purposes of identifying, marshaling, or preserving all (or most) available
6 Receivership Assets. Accordingly, the Receiver intends to continue working with
7 Defendants' counsel in order to ensure that Defendants produce all relevant
8 documents and information in their possession or control, and to request the
9 production of documents (via subpoena or otherwise) from any third parties he
10 subsequently identifies as possessing materials relevant to his efforts to understand
11 the business and financial activities of the Receivership Entities and to identify,
12 marshal, and preserve available Receivership Assets.

13 **C. Recovery Of Receivership Assets In Cash Form.**

14 In addition to the Projects, the Receiver understands that the Entities
15 maintained a number of bank accounts, some of which still contain Receivership
16 Assets. As of the date of this Initial Report, and based upon a schedule provided by
17 counsel for the Defendants, the Receiver has identified thirteen (13) bank accounts
18 that contain – or may contain – Receivership Assets³, all of which are presently
19 subject to the asset freeze maintained in the Appointment Order. The Receiver has
20 sent turn-over demands to those banks administering receivership accounts to advise
21 of the Receiver's appointment, provide a copy of the Appointment Order, and
22 request the immediate turn-over of the subject account(s) and all associated funds.
23 As of the date of this Initial Report, a total of four (4) bank accounts have been
24 turned over to the Receiver in accordance with the mandate in the Appointment
25 Order.

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28 ³ The Receiver has also prepared document subpoenas in connection with these
accounts in the hopes of recovering a complete set of relevant financial records.

1 In the aggregate, a total of \$49,057.23 in Receivership Assets has been turned
2 over to the Receiver, as follows:

<u>Bank</u>	<u>Redacted Account Number</u>	<u>Amount</u>
Bank of America	**8642	\$400.55
Bank of America	**4083	\$40,177.93
Citizens Business Bank	**2709	\$568.69
Citizens Business Bank	**2764	\$7,910.06
<u>TOTAL:</u>		<u>\$49,057.23</u>

11 Clearly, this amount reflects a very small portion of the funds allegedly raised
12 by the Entities, and the Receiver is working diligently to identify the locations and
13 amount of any remaining funds.

14 With respect to remaining funds, the Receiver further understands that
15 approximately \$500,000 in investor funds is held in an account administered by
16 GBC International Bank for the benefit of the Hesperia project. The Receiver is
17 presently coordinating with GBC in to secure the turn-over of these funds. Recent
18 correspondence from GBC's counsel suggests that GBC may not be amenable to a
19 voluntary turn-over of these funds. Should that prove to be the case, the Receiver
20 will seek a contempt citation against GBC for a violation of Article V of the
21 Appointment Order which, among other things, vests the Receiver with exclusive
22 control over all Receivership Assets and requires "[a]ll persons ... having control,
23 custody or possession of Receivership [Assets] to turn such property over to the
24 Receiver."

25 In addition, the Receiver further understands that a total of \$2,034,897.66 in
26 Receivership Assets is presently being held by Celtic Bank as cash collateral in
27 connection with the construction loan described above. While the Receiver has not
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1 requested the turn-over of these funds at this time, the \$2 million held by Celtic
2 Bank is a Receivership Asset and is subject to turn-over at the Receiver's discretion
3 in accordance with the terms of the Appointment Order.

4 **D. Administration Of The Projects.**

5 As of the date of this Initial Report, it appears that the principal non-cash
6 assets of the Receivership Entities are the Projects, each of which is a piece of real
7 property at differing stages of development, and each of which appears to have been
8 intended to house a skilled nursing or equivalent medical facility. As detailed
9 below, while the Receiver has not yet recovered sufficient information to arrive at a
10 conclusion regarding the appropriate disposition strategies for each Project, at least
11 two of the Projects face substantial and imminent problems that require the
12 Receiver's immediate attention.

13 1. The Hesperia Project.

14 In accordance with the terms of the Appointment Order, the Receiver has
15 assumed exclusive authority and control over the Hesperia Project. The Hesperia
16 Project presently consists of a parcel of substantially undeveloped (but entitled) land
17 in the City of Hesperia, California.⁴ It was apparently intended by the Defendants to
18 be developed as a skilled nursing or similar medical facility. At present, while no
19 buildings have been constructed on the property, some substantial excavation and
20 other work has begun, including excavation and other work that has resulted in the
21 demolition of a fire access road leading to the Project and that previously provided
22 fire department access to an adjacent, unrelated medial facility, and the exposure of
23 a large water line used, among other things, for fire suppression. The Receiver has
24 learned that, if this water line remains exposed, there is a risk that it could fracture if
25 overnight temperatures reach a sufficient low, leading to the suspension of water
26 services associated with the line.

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⁴ A photograph of part of the Hesperia Project is attached hereto as **Exhibit A**.

1 In addition, the Project is situated atop a large hill and its property includes a
2 hillside with substantial surface area, all of which has been denuded and is presently
3 at risk of erosion or substantial subsidence as a consequence of the onset of the rainy
4 season and what is predicted to be a fairly destructive El Niño. Worse, a residential
5 neighborhood sits at the base of the hill, meaning that a large mudslide could lead to
6 significant risk of injury to persons and property, and attendant liability.

7 The Receiver has learned from the pre-receivership professionals associated
8 with the project, and from his consultation with personnel in the Hesperia Mayor's
9 Office, Department of Building and Safety, Fire Department, and others, that
10 reconstructing the fire access road and re-trenching the exposed water line are
11 inextricably intertwined with the construction of a retaining wall to offset the
12 portion of the hillside that has been removed.⁵ The present estimate for the cost of
13 such construction exceeds \$1 million.⁶

14 Accordingly, and in an effort to address the imminent threat of hillside
15 erosion (and preserve the value of the Project to the maximum extent presently
16 possible), the Receiver is in the process of soliciting bids to install a large erosion-
17 prevention tarp over the exposed hillside, and expects to have bids reviewed and a
18 decision made in the coming days or weeks. Of course, the installation of an
19 erosion-prevention tarp will not resolve the pressing fire access and water line issues
20 associated with the Project, and the Receiver is working diligently with the
21 adjoining land-owner and City officials to identify and pursue all available
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23 ⁵ The Receiver has learned, indirectly, that if the fire access and water issues are
24 not promptly addressed, the City of Hesperia may begin to assess financial
penalties against the Project.

25 ⁶ The Receiver has confirmed that California United Bank is holding \$1.4 million
26 in investor funds in escrow, originally destined for the Hesperia Project.
California United Bank has agreed to turn-over these funds to the Receiver.
27 However, as of the date of this Initial Report, the Receiver has not determined
whether his asset disposition authority under the Appointment Order (e.g.
28 making payments in the ordinary course of business to preserve Receivership
Assets) extends to escrowed funds never deployed for investment. Accordingly,
this issue will be addressed in greater detail in a subsequent submission to the
Court.

1 alternatives. The Receiver will provide a further update on these pressing matters in
2 a later submission to the Court.

3 2. The Fontana Project.

4 In accordance with the terms of the Appointment Order, the Receiver has
5 assumed exclusive authority and control over the Fontana Project, which consists of
6 a partially completed skilled nursing facility in the City of Fontana, California.⁷
7 Based on the Receiver's review of the Project, and his discussions with the Project's
8 lead contractors and Celtic Bank – which holds a security interest in the Project and
9 which has been disbursing construction funds – the Receiver believes the Project to
10 be approximately 45% complete. However, like the Hesperia Project, the Fontana
11 Project is at risk of weather-related damage, given that its walls and roof have not
12 been completed and weatherized. The Receiver is presently coordinating with
13 relevant contractors and Celtic Bank in an effort to ensure that weatherization can be
14 completed in a timely manner in order to preserve the value of the Project.

15 However, continued construction at the Fontana Project is complicated by a
16 series of substantial disagreements between the lead contractor and other
17 contractors, including disputes relating to the scope of work performed, side
18 agreements with subcontractors whose services may or may not be subject to the
19 original scope-of-work budget, and other matters.⁸ In addition, some disputes
20 appear to have arisen in connection with the amount and disposition of draws from
21 the Celtic Bank loan.

22 Since his appointment, the Receiver has been in regular and consistent contact
23 with all parties with an interest in the Fontana Project, including contractors and
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25 ⁷ A photograph of the exterior of the Fontana Project is attached hereto as **Exhibit**
26 **B.**

27 ⁸ Some contractors and subcontractors have threatened to record mechanics' liens
28 against the Fontana Project as a result of these disputes. Such a recordation
would be a violation of the self-help bar contained in Article I of the
Appointment Order, which prevents, among other things, "creating or enforcing a
lien upon any Receivership [Asset]."

1 Celtic Bank, and believes he has negotiated an agreement whereby those
2 construction tasks that are immediately necessary will be completed by the
3 appropriate parties, with appropriate funding from a pending Celtic Bank draw. The
4 Receiver will host a meeting of interested parties, including contractors, architects,
5 Celtic Bank, and others, with the hope of addressing and resolving the remaining
6 outstanding issues associated with the Project, on December 23, 2015. From a
7 receivership estate administration standpoint, the Receiver presently believes that all
8 outstanding construction necessary to weatherize and preserve the Project can be
9 completed without resorting to additional funds raised from investors.

10 3. The Lynwood Project.

11 In accordance with the terms of the Appointment Order, the Receiver has
12 assumed exclusive authority and control over the Lynwood Project, which consists
13 of a vacant building in the City of Lynwood, California and which previously served
14 as a skilled nursing center. Although the Lynwood Project is the Project for which
15 the Receiver has recovered the least information, he understands that the Defendants
16 planned to rehabilitate the property and reopen it as a new skilled nursing facility.

17 The Project is subject to an existing conditional use permit. However, all of
18 the existing construction permits appear to be expired, and it does not appear that
19 any substantial demolition or construction work was ever commenced. In addition,
20 the Lynwood Project appears to be subject to nearly \$260,000 in delinquent property
21 taxes, with more than \$40,000 in additional property taxes presently due.

22 As of the date of this Initial Report, the Receiver has not obtained documents
23 sufficient to identify any additional issues confronting the Project. As additional
24 materials are recovered and reviewed, the Receiver will advise the Court if he
25 believes any urgent action needs to be taken in connection with the Lynwood
26 Project.

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1 **E. Receivership Claims Against Third Parties.**

2 In addition to hard assets in the form of cash and real property, the
3 Receivership Assets also include claims for repayment of funds inuring to the
4 Receivership Entities. Accordingly, and as noted above, the Receiver is in the
5 process of securing as many documents and other materials as he can which speak to
6 the business and financial activities of the Receivership Entities, including
7 potentially unlawful transfers to third parties and transactions giving rise to claims
8 for restitution in connection with the acquisition or development of the Projects or
9 other real properties purchased, in whole or in part, with funds raised from Entity
10 investors. Examples of potential claims include:

11 1. Disgorgement Claims against Fraudulent Transferees.

12 The Commission has alleged, in its Complaint, that Defendant Yang used
13 investor funds to repay personal loans unrelated to the Projects and in contravention
14 of the Projects' various offering documents. To the extent that this allegation is true,
15 the Receivership Entities retain claims for disgorgement of such funds, which may
16 be prosecuted by the Receiver.

17 2. Claims for Reimbursement Associated with Non-Receivership
18 Property Acquisitions.

19 The Receiver presently understands that at least \$500,000 raised from
20 investors was used in connection with the purchase of real property near Mentone,
21 California. He further understands that this property is presently for sale and,
22 assuming that certain zoning contingencies are met, the property may be sold for
23 more than \$4 million, with the surplus proceeds to be remitted to the Receivership
24 Entities, on the grounds that they are derived from the original expenditure of
25 Receivership Assets. In the event that the Mentone sale proceeds, the Receiver will
26 coordinate with the escrow agent administering the sale to ensure that all appropriate
27 and available proceeds are delivered to the Receiver.

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1 3. Additional Claims against Third Parties.

2 As noted above, the Fontana Project, at least, is subject to a number of
3 disputes with, and between, contractors, including in the form of San Bernardino
4 Superior Court litigation that has been stayed in accordance with Article J of the
5 Appointment Order. Among these litigation matters are direct and cross-claims
6 alleged on behalf of certain Receivership Entities in connection with the
7 construction of the Fontana Project.

8 By virtue of his appointment, the Receiver succeeds as legal representative to
9 the Receivership Entities, with exclusive authority and control over their assets,
10 including their books and records. By operation of law, the Receiver also succeeds
11 to the privileges, including the attorney-client privilege of each of the Entities. See
12 United States v. Plache, 913 F.2d 1375, 1381 (9th Cir. 1990); see also CFTC v.
13 Standard Forex, Inc., 882 F.Supp. 40, 42-43 (E.D.N.Y. 1995) (attorney-client
14 privilege transfers to receiver because receiver supplants prior management of
15 entities in receivership). Accordingly, pursuant to the terms of the Appointment
16 Order and applicable law, any litigation claims inuring to the benefit of the
17 Receivership Entities are now Receivership Assets, to be prosecuted at the
18 Receiver's discretion, and based on his reasonable business judgment. The Receiver
19 is therefore in the process of securing all available and relevant information relating
20 to pending pre-receivership litigation in order to determine what, if any, claims
21 merit continued prosecution, and on what terms.

22 **IV. RECOMMENDATIONS FOR FURTHER RECEIVERSHIP**
23 **ADMINISTRATION.**

24 As is clear from the above, while the Receiver has successfully assumed
25 authority and control over the Projects, and is working diligently with interested
26 parties to address pressing issues associated with, at least, the Hesperia and Fontana
27 Projects, his document recovery and analysis effort remains substantially
28 incomplete. Accordingly, the Receiver anticipates continuing this effort until such

1 time as he has developed an understanding of the business and financial activities of
2 the Receivership Entities sufficient to identify all available, outstanding
3 Receivership Assets, and to take those steps necessary and appropriate to secure and
4 preserve such assets. In addition, and with respect to the Projects, the Receiver
5 anticipates engaging a qualified construction and development consultant to provide
6 insight and analysis regarding those alternatives that would best preserve the value
7 of the Projects, as well as those disposition alternatives that would result in a
8 maximal return to the estate of the Receivership Entities.

9 **V. CONCLUSION AND PETITION FOR FURTHER INSTRUCTIONS.**

10 Accordingly, and based on the information presented above, the Receiver
11 respectfully requests that this Court enter an Order:

- 12 1. Accepting the Receivership Initial Report;
- 13 2. Authorizing the Receiver to continue to administer the Receivership
14 Entities and their estate in accordance with the terms of the Appointment Order;
- 15 3. Authorizing the Receiver to undertake the recommendations presented
16 herein, including a continued document recovery and review effort and the
17 engagement of those professionals he deems necessary for the proper administration
18 and disposition of Receivership Assets, including the Projects; and
- 19 4. Providing such other and further relief as the Court deems necessary
20 and appropriate.

21
22 Dated: December 23, 2015

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

23
24
25 By: /s/ Joshua A. del Castillo
26 JOSHUA A. DEL CASTILLO
27 [Proposed] Attorneys for Receiver
28 STEPHEN J. DONELL

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VERIFICATION

I have read the foregoing INITIAL REPORT OF RECEIVER, STEPHEN J. DONELL, RE: MARSHALING AND PRESERVATION OF RECEIVERSHIP ASSETS, AND PETITION FOR FURTHER INSTRUCTIONS, and know its contents.

I am the Receiver appointed in the above-entitled action. I believe the matters stated in the foregoing document are true, to the best of my current knowledge.

Executed on December 23, 2015, at Los Angeles, California.


Stephen J. Donell, Receiver

Exhibit A
Hesperia Project



Exhibit B
Fontana Project

