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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 AND

24 YANROB'S MEDICAL, INC., et al.  
 25 Relief Defendants,

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

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION OF RECEIVER, STEPHEN J.  
 DONELL, FOR ORDER IN AID OF  
 RECEIVERSHIP

[Notice of Motion and Motion;  
 Declaration of Stephen J. Donell; and  
 [proposed] Order submitted concurrently  
 herewith]

Date: March 7, 2016  
 Time: 1:30 p.m.  
 Ctrm: 6  
 Judge: Stephen V. Wilson

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

In accordance with this Court's December 11, 2015 Preliminary Injunction, Order Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the "Appointment Order"), and the law governing federal equity receiverships, Stephen J. Donell, the Court-appointed permanent receiver (the "Receiver") for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the "Receivership Entities"), hereby respectfully requests that this Court enter an Order in Aid of Receivership, providing the administrative and procedural relief requested below, which relief the Receiver believes is necessary and appropriate for the efficient and cost-effective administration of the estates of the Receivership Entities (collectively, the "Estate").

**1. Employment and Compensation of Legal Counsel:** The Appointment Order expressly authorizes the Receiver to engage counsel and other "Retained Personnel" as defined therein. The Receiver is not an attorney and does not have attorneys on staff at his company. Considering the complexity and urgency of the numerous legal and factual issues facing the Receivership Entities, as detailed in the Receiver's recently-submitted Initial Report and Petition for Instructions (the "Initial Report"), and in accordance with the terms of the Appointment Order, the Receiver has engaged Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins") to serve as his general receivership counsel.

Pursuant to Article V.P.2 of the Appointment Order, the Receiver requests that the Court formally authorize and approve Allen Matkins' engagement and compensation in accordance with the terms of this Motion for Order in Aid of Receivership ("Motion"). Allen Matkins is highly experienced in federal equity receivership matters and well-qualified to assist the Receiver in this matter, as well

1 as to provide legal advice and assistance in other applicable areas of law, as  
2 necessary, including real estate, litigation, employment, corporate, and tax matters.

3       **2. Employment and Compensation of Wieland-Davco Corporation As**  
4 **Construction And Development Consultant:** The Appointment Order further  
5 authorizes the Receiver, under Article V.D.1, to have all of the "powers, authorities,  
6 rights and privileges heretofore possessed by the officers, directors, managers and  
7 general and limited partners" of the Receivership Entities, and further authorizes the  
8 Receiver, under Article V.D.4.c, to "manage, control, operate and maintain" the  
9 Estate, including engaging professionals to preserve the value of Estate assets. As  
10 reflected in the Initial Report, the Estate includes a number of real property projects  
11 (the "Projects"), some of which are under construction, and considering the urgency  
12 of securing appropriate construction/development consultation and advice, the  
13 Receiver has determined that he requires the assistance of the construction-  
14 management firm, The Wieland-Davco Company ("Wieland"), to assist with and  
15 advise on construction, management, and development issues relating to the  
16 Projects. Accordingly, and pursuant to Article V.P.2 of the Appointment Order, the  
17 Receiver requests that the Court formally authorize and approve Wieland's  
18 engagement and compensation in accordance with the terms of this Motion.  
19 Wieland is highly experienced in construction management and development  
20 consultation, and is also qualified to assist the Receiver in the administration of an  
21 Estate that includes ongoing construction at multiple sites.

22       **3. Employment of Mandarin-Language Translation Services:**

23       As alleged by the Plaintiff Securities and Exchange Commission  
24 ("Commission"), at least forty (40) individuals from China invested in the  
25 Receivership Entities. For this reason, the Receiver requests authority to take steps  
26 to keep such investors apprised of the receivership. The Receiver requests authority  
27 from the Court to utilize the services of Morningside Translations ("Morningside"),  
28 including making payments to Morningside for translation services on an as-

1 invoiced basis, when and as the Receiver deems it necessary to provide cost-  
2 efficient, basic notices to investors in simplified Mandarin in accordance with the  
3 terms of this Motion.

4       **4. Privacy Protection for Investors in the Receivership Entities:** As  
5 mentioned above, this case involves forty (40) overseas investors in the  
6 Receivership Entities. The Receiver proposes methods for complying with Local  
7 Rule 5.2-1 and Federal Rules of Civil Procedure, Rule 5.2, including redacting  
8 various personal identifiers, as further detailed below.

9       **5. Website Communications:** The Receiver proposes to use his website,  
10 www.fedreceiver.com, to post information about the case and his activities, along  
11 with copies of all materials he files with the Court. The website will be updated  
12 regularly with filed materials, notices to investors, as described below, and related  
13 information.

14       **6. Relieving the Receiver From the Local Rule 66-5 Requirement to**  
15 **File a Schedule of Creditors:** Investor and creditor claim amounts are not known  
16 at this time, and an accounting will need to be completed before potential investor  
17 claims can be properly identified and quantified. Additionally, based on the records  
18 the Receiver has recovered and reviewed thus far, the investors appear to be  
19 individuals and their personal information, including their names and addresses,  
20 should not be filed publically absent a compelling need for disclosure.

21       **7. Establishing Requirements Relating to Service and Relieving the**  
22 **Receiver from Local Rule 66-7 Requirements:** Consistent with the requirements  
23 of due process, and as detailed below, the Receiver proposes to provide notice to  
24 interested parties of all matters requiring notice by electronic means, via the posting  
25 of such notices on his website and the delivery of email notices to all interested  
26 parties for whom the Receiver has a valid email address, as further discussed below.

27       **8. Modifying the Appointment Order To Continue The Deadline For**  
28 **Submission of The Liquidation Plan:** The Appointment Order requires the

1 receiver to file a liquidation plan<sup>1</sup> relating to property of the Receivership Entities  
2 within 90 days of his appointment. The Receiver requests that the Court extend the  
3 deadline for the submission of the liquidation plan to 180 days from the entry of the  
4 Appointment Order. As reflected herein, and as addressed preliminarily in the  
5 Initial Report, the issues facing the real properties in the Estate, including the  
6 Projects, are sufficiently complex that they may not be resolved within 90 days of  
7 the entry of the Appointment Order. Indeed, the Receiver may have to undertake  
8 additional construction, resolve lien disputes, prosecute related litigation, or perform  
9 other actions before any disposition can be undertaken. Accordingly, the Receiver  
10 respectfully request that the Court extend its deadline for the submission of the  
11 liquidation plan for another 90 days, for a total of 180 days from the date of the  
12 entry of the Appointment Order.

13 **9. Authorizing the Receiver to Abandon any Assets of the**  
14 **Receivership Entities Which He Deems to be "Underwater" or Otherwise to**  
15 **Constitute a Net Loss or Liability to the Receivership Entities:** As reflected in  
16 the Receiver's Initial Report, the assets of the Estate include the Projects. While the  
17 Receiver does not have complete real property, financial, and appraisal information  
18 for each Project as of the date of this Motion, he has already obtained some  
19 information which suggests that one or more of the Projects may be subject to liens  
20 in excess of market value or may otherwise constitute a liability in excess of market  
21 value such that abandonment of the Project(s) is appropriate. Accordingly, the  
22 Receiver requests that the Court authorize the Receiver to abandon any Estate asset  
23 comprised of real property, including any Project, which he deems, in his reasonable  
24 business judgment, to be "underwater," meaning worth less than the legitimate,  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Article V.O.2 of the Appointment Order defines the "liquidation plan" as "a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property[.]"



1 unsatisfied liens against it, or otherwise to constitute a net loss or liability to the  
2 Receivership Entities or the Estate.

3 **II. PROCEDURAL HISTORY AND RELEVANT FACTUAL**  
4 **BACKGROUND.**

5 The above-captioned action commenced on November 19, 2015, when the  
6 Commission filed its Complaint. (Docket No. 1.) In its Complaint, the Commission  
7 alleges that from September 2012 through at least early 2014, Robert Yang  
8 ("Yang") and Claudia Kano ("Kano"), through their affiliated entities, Suncor  
9 Fontana, LLC ("Suncor Fontana"), Suncor Hesperia, LLC ("Suncor Hesperia"), and  
10 Suncor Care Lynwood, LLC ("Suncor Lynwood") (collectively, the "Suncor  
11 Entities") raised millions of dollars from forty (40) investors located in China who  
12 sought to participate in the federal EB-5 investment and immigration program. The  
13 Commission alleged these funds were raised via three securities offerings that  
14 indicated that the investor funds would be used exclusively to develop specific  
15 medical facilities, but that Yang and Kano engaged in a scheme to misappropriate,  
16 divert, and misuse investor funds, while misrepresenting that the securities offerings  
17 were "structured to maximize" the prospects that the investments would qualify for  
18 the EB-5 program. Shortly after the filing of the Complaint, and upon the  
19 stipulation of the parties, the Appointment Order was entered on December 11,  
20 2015.

21 Since his appointment, the Receiver has begun to assume authority and  
22 control over the Receivership Entities in accordance with the terms of the  
23 Appointment Order, and has endeavored to locate, secure, and preserve the value of  
24 the assets of the Estate. (See concurrently submitted Declaration of Stephen J.  
25 Donell ["Donell Decl."], ¶ 2.)

26 As detailed in his Initial Report, the Receiver has not yet recovered and  
27 reviewed all of the documents necessary to identify each and all of the assets of the  
28 Estate, nor to develop a comprehensive understanding of the business and financial

1 activities of the Receivership Entities. Those materials that the Receiver has  
2 secured and reviewed suggest that the assets of the Estate consist primarily of:

- 3 • The books and records, including financial and business records, of the  
4 Receivership Entities;
  - 5 • Cash in bank accounts frozen in accordance with this Court's prior  
6 Orders, including funds attributable to the Entities held in non-entity  
7 accounts;
  - 8 • The real property associated with defendant Suncor Fontana, LLC (the  
9 "Fontana Project"), currently an active construction site for what  
10 appears intended as a skilled nursing facility;
  - 11 • The real property associated with defendant Suncor Hesperia, LLC (the  
12 "Hesperia Project"), currently a piece of largely undeveloped hilltop  
13 land apparently intended to house a skilled nursing facility;
  - 14 • The real property associated with defendant Suncor Care Lynwood,  
15 LLC (the "Lynwood Project"), currently a vacant structure previously  
16 used as a skilled nursing facility, and apparently intended to be  
17 refurbished and reopened as another one;
  - 18 • An interest in and claims against the assets of Yanrob's Medical, Inc.,  
19 HealthPro Capital Partners, LLC, and Suncor Care, Inc. ("Relief  
20 Defendants") to this action arising from the transfers of assets of the  
21 Estate to such Relief Defendants in the pre-receivership period;
  - 22 • Claims against third parties associated with the improper transfer of  
23 assets of the Estate to such parties in the pre-receivership period,  
24 including with the apparent purchase of a real property in or around  
25 Mentone, California;
  - 26 • Claims against third parties arising in connection with contractual and  
27 other relations concerning the Projects.
- 28

1           The Projects are in varying stages of completion, and some are presented with  
2 urgent issues which require immediate-term attention. For example, and as  
3 addressed in the Initial Report, the Hesperia Project requires immediate attention  
4 due to the fact that, while it was apparently intended to be developed into a skilled  
5 nursing or similar medical facility, at present no buildings have been constructed,  
6 excavation work has removed a fire access road leading to the Project and that  
7 previously provided fire department access to an adjacent, unrelated medial facility.  
8 (Donell Decl., ¶ 3.) The Project is also situated atop a large hill and its property  
9 includes a graded hillside with substantial surface area, all of which has been  
10 denuded and is presently at risk of erosion or substantial subsidence as a  
11 consequence of the onset of the rainy season and what is predicted to be a fairly  
12 destructive El Niño. (Id.)

13           The Fontana Project is a partially completed skilled nursing facility in the  
14 City of Fontana, California. As detailed in his Initial Report, the Receiver believes  
15 the Project to be approximately 45% complete. (Donell Decl., ¶ 4.) Like the  
16 Hesperia Project, the Fontana Project is at risk of weather-related damage, given that  
17 its walls and roof have not been completed or weatherized. (Id.) Moreover, the  
18 Fontana Project is complicated by a series of substantial disagreements, including  
19 litigation, between the Entities and contractors working on the Project, relating to  
20 the amount and disposition of draws under the relevant loan and construction  
21 completed to date. (Id.)

22           The Lynwood Project consists of a vacant building in the City of Lynwood,  
23 California which the Receiver understands previously served as a skilled nursing  
24 center. (Donell Decl., ¶ 5.) The intent appears to have been to rehabilitate the  
25 property and reopen it as a new skilled nursing facility. (Id.) While the Project is  
26 subject to an existing conditional use permit, all existing construction permits appear  
27 to be expired, it appears that no substantial work has begun, and the Project appears  
28

1 to be subject to nearly \$260,000 in delinquent property taxes, with more than  
2 \$40,000 in additional property taxes presently due. (Id.)

3 Put simply, the Receiver has concluded that the instant receivership is  
4 sufficiently complex to require further aid of this Court, as it involves diverse Estate  
5 assets, numerous investors who do not live in the United States, and a variety of  
6 Projects in various stages of completion. Given the size and complexity of the  
7 receivership case, including the potential issues facing the Receivership Entities, the  
8 Receiver seeks an Order in Aid of Receivership from this Court:

9 (1) Authorizing the Receiver to employ and compensate Allen Matkins as  
10 his general receivership counsel, in accordance with the terms presented in this  
11 memorandum of points and authorities;

12 (2) Authorizing the Receiver to employ and compensate Wieland as his  
13 construction and development consultant;

14 (3) Authorizing the Receiver to employ and compensate a simplified  
15 Mandarin-translator as necessary at reasonable market rates on an as-invoiced basis;

16 (4) Authorizing and approving the Receiver's proposed procedures to  
17 protect the privacy of investors in the Receivership Entities;

18 (5) Authorizing and approving the Receiver's use of a receivership-specific  
19 website to post information about the receivership case and to provide notice of  
20 filings and other material developments to all interested parties;

21 (6) Relieving the Receiver of the requirements of Local Rule 66-5 that the  
22 Receiver file a schedule of creditors;

23 (7) Establishing service requirements to conserve assets of the Estate while  
24 satisfying the requirements of due process, and relieving the Receiver of Local Rule  
25 66-7 requirements;

26 (8) Authorizing and approving the Receiver's request to allow him 180  
27 days, instead of 90 days, from the date of the Appointment Order's entry, to file the  
28 liquidation plan contemplated in the Appointment Order; and

1 (9) Authorizing the Receiver to deem abandoned any Estate property,  
2 including the Projects, which he determines, in his reasonable business judgment, to  
3 be "underwater" or otherwise constitute of a net loss or liability to the Receivership  
4 Entities or to the Estate.

5 In the Receiver's reasonable business judgment, such relief will assist in the  
6 efficient and effective administration of the Estate, thereby conserving resources for  
7 the benefit of Entity investors. (Donell Decl., ¶ 6.)

### 8 **III. LEGAL AUTHORITY.**

#### 9 **A. District Court Power To Administer The Receivership.**

10 A district court's power to administer an equity receivership is extremely  
11 broad. SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset  
12 Management, LLC, 242 F.3d 325, 331 (5th Cir. 2001); SEC v. Basic Energy &  
13 Affiliated Resources, 273 F.3d 657, 668 (6th Cir. 2001); SEC v. Elliot, 953 F.2d  
14 1560, 1566 (11th Cir. 1992); SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991).

15 "The power of a district court to impose a receivership or grant other forms of  
16 ancillary relief does not in the first instance depend on a statutory grant of power  
17 from the securities laws. Rather, the authority derives from the inherent power of a  
18 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369  
19 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
20 and efficient administration of the estate by the district court for the benefit of  
21 creditors." Hardy, 803 F.2d at 1038. As the appointment of a receiver is authorized  
22 by the broad equitable powers of the court, any distribution of assets must also be  
23 done equitably and fairly. See Elliot, 953 F.2d at 1569. The Ninth Circuit has  
24 explained:

25 A district court's power to supervise an equity receivership and  
26 to determine the appropriate action to be taken in the  
27 administration of the receivership is extremely broad. The  
28 district court has broad powers and wide discretion to determine  
the appropriate relief in an equity receivership. The basis for  
this broad deference to the district court's supervisory role in  
equity receiverships arises out of the fact that most  
receiverships involve multiple parties and complex transactions.

1           SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005) (citations  
 2 omitted); see also CFTC v. Topworth Int'l, Ltd.; 205 F.3d 1107, 1115 (9th Cir.  
 3 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we  
 4 generally uphold reasonable procedures instituted by the district court that serve  
 5 th[e] purpose' of orderly and efficient administration of the receivership for the  
 6 benefit of creditors."). Accordingly, this Court has broad equitable powers and  
 7 discretion in formulating procedures, schedules and guidelines for administration of  
 8 the Estate.

9           **B. Deference To The Receiver's Business Judgment.**

10           In the estate administration context, courts are deferential to the business  
 11 judgment of bankruptcy trustees, receivers, and similar estate custodians. See, e.g.,  
 12 Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the  
 13 business management decisions of a bankruptcy trustee."); Southwestern Media,  
 14 Inc. v. Rau, 708 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the form  
 15 of ... [estate administration] ... rested with the business judgment of the trustee.");  
 16 In re Thinking Machines Corp., 182 B.R. 365, 368 (D. Mass. 1995) ("The  
 17 application of the business judgment rule ... and the high degree of deference  
 18 usually afforded purely economic decisions of trustees, makes court refusal  
 19 unlikely.") (rev'd on other grounds, In re Thinking Machines Corp., 67 F.3d 1021  
 20 (1st Cir. 1995)).

21 **IV. RELIEF REQUESTED.**

22           **A. Employment And Compensation Of Allen Matkins.**

23           1.       Grounds for Employment of Counsel.

24           Pursuant to Article V of the Appointment Order, including but not limited to  
 25 subdivisions D.4.g & P.2 thereof, the Receiver is authorized to and desires to  
 26 employ Allen Matkins to assist him in the performance of his duties as Receiver.

27           The Receiver is not an attorney and does not have in-house receivership  
 28 counsel. In the Receiver's reasonable business judgment, the complex relationships



1 between and among the Receivership Entities, and the business and financial  
2 transactions in which they engaged with one another, their investors, their  
3 principals, and third parties, along with the numerous legal issues the Receivership  
4 Entities are expected to face, all militate in favor of the employment and  
5 compensation of well-qualified legal counsel, to assist the Receiver in, among other  
6 things: (a) recovering, preserving, managing, and appropriately disposing of assets  
7 of the Estate; (b) addressing legal issues related to the administration of the  
8 Receivership Entities and their business, assuming any such business can continue  
9 to be operated or legitimately wound down; (c) providing legal advice relating to the  
10 Receiver's investigation of the Receivership Entities' financial activities,  
11 investments, and potential causes of action against third parties, including  
12 undertaking the discovery authorized by the Appointment Order and evaluating the  
13 strengths and weaknesses of potential claims against parties in possession of Assets  
14 of the Estate; (d) pursuing claims and causes of action, including, where appropriate,  
15 through litigation; (e) providing legal advice relating to investor and creditor claims  
16 against the Estate; (f) formulating and presenting to the Court a plan for the  
17 administration of investor and creditor claims and distribution of assets of the  
18 Estate, if any; and (g) preparing and submitting Interim Reports and any other  
19 required materials to this Court and other courts presiding over pre-receivership  
20 litigation. (Donell Decl., ¶ 7.)

21 The Receiver respectfully requests that the Courts specifically authorize and  
22 approve the employment and compensation of Allen Matkins as the Receiver's  
23 general receivership counsel, pursuant to the terms described below.

24 2. Selection of Allen Matkins as Counsel.

25 The Receiver selected Allen Matkins because the firm is highly qualified to  
26 represent him in connection with this complex receivership, given its substantial  
27 experience and expertise in federal equity receiverships, real estate, litigation,  
28 employment, corporate, and tax matters. Allen Matkins has represented federal

1 equity receivers appointed in numerous cases initiated by the Commission and other  
2 federal agencies. Attached hereto as Exhibit A is an Allen Matkins firm overview.  
3 Attached hereto as Exhibit B is a list of cases where Allen Matkins has represented  
4 court-appointed receivers in federal enforcement actions.

5 3. Proposed Terms of Allen Matkins Employment and  
6 Compensation.

7 In addition to the cost savings and other benefits to the Estate of retaining  
8 highly experienced legal counsel, Allen Matkins has agreed to discount its ordinary  
9 billing rates on this matter by 10%. Allen Matkins has further agreed not to adjust  
10 its billing rates for attorneys staffed on this matter until July 1, 2017, despite the fact  
11 that the firm's rates ordinarily adjust in July of each year and would ordinarily adjust  
12 upward at the start of its fiscal year on July 1, 2016. In other words, the Receiver  
13 will be billed at a substantially discounted rate for at least twelve months after the  
14 period when Allen Matkins' rates would ordinarily be adjusted, and will benefit  
15 from a 10% across-the-board discount for the duration of Allen Matkins'  
16 representation of the Receiver in this matter. (Donell Decl., ¶ 8, Ex. A.)

17 In addition, Allen Matkins has agreed to limit its charges for all out-of-pocket  
18 costs to those permitted by the Office of the United States Trustee in bankruptcy  
19 cases in this District. (Id.) Allen Matkins understands and agrees that payment of  
20 its fees and reimbursement of its expenses will be made only after an application  
21 and noticed hearing. (Id.) The Receiver presently anticipates that such applications  
22 will be submitted to the Court, along with the Receiver's and any other relevant  
23 professionals' applications, pursuant to the terms of the Appointment Order.  
24 Finally, to the extent the Receiver determines it is necessary to initiate litigation to  
25 recover Estate assets or otherwise pursue claims against third parties, the Receiver  
26 will file an application seeking authority to take such action, pursuant to the  
27 Appointment Order, including an estimated budget for legal fees and costs.  
28



1                   4.     Anticipated Principal Receivership Team.

2                   At present, the Receiver anticipates that the Allen Matkins attorneys  
3 principally staffed on this matter will be Joshua A. del Castillo, David R. Zaro,  
4 Kenyon D. Harbison, and Melissa K. Zonne.

5                   Mr. del Castillo is a bankruptcy and creditors' rights litigator at Allen  
6 Matkins, with nearly a decade of experience representing receivers appointed at the  
7 request of various federal agencies, including the Commission. Mr. Zaro is likewise  
8 a bankruptcy and creditors' rights litigator at Allen Matkins, with multiple decades  
9 of experience representing receivers appointed at the behest of the Commission and  
10 other federal agencies. Mr. Harbison is a seventh-year litigator with a developing  
11 practice in receivership matters. Ms. Zonne is a second-year litigation associate  
12 with a developing practice in receivership matters. Attached hereto as **Exhibits C,**  
13 **D, E,** and **F** are the biographies of attorneys del Castillo, Zaro, Harbison, and Zonne.

14                   Mr. del Castillo is expected to serve as lead counsel, and will provide legal  
15 advice relating to the administration of the instant receivership, including in  
16 connection with all necessary discovery and Receivership Asset recovery efforts,  
17 will supervise the preparation of all pleadings to be filed with the Court, and will  
18 coordinate all necessary legal services. It is anticipated that Mr. Harbison and  
19 Ms. Zonne will perform the bulk of the post-engagement, day-to-day administration  
20 of this matter (after an Order on this Motion is entered), and will be charged with  
21 necessary research and initial briefing of materials for submission to the Court,  
22 subject to recommendations and revisions from Mr. del Castillo. Mr. Zaro will  
23 consult and provide senior partner-level advice on matters arising in the context of  
24 the receivership case, as appropriate.

25                   The discounted rates Allen Matkins proposed to charge for the  
26 aforementioned Allen Matkins attorneys are as follows:

27  
28

<u>Attorney</u>	<u>Position</u>	<u>CA Bar Number</u>	<u>Discounted Hourly Billing Rate</u>
Joshua A. del Castillo	Partner	239015	\$495.00
David R. Zaro	Partner	124334	\$670.50
Kenyon D. Harbison	Senior Counsel	260416	\$445.50
Melissa K. Zonne	Associate	301581	\$306.00

(Donell Decl., ¶ 8, Ex. A.) The above-described staffing arrangement is expected to maximize efficiency and minimize costs to the Estate, and reflects an effective utilization of available resources. Allen Matkins has agreed not to accept compensation for services rendered in this matter except in accordance with the terms of this Motion and any Order entered thereon, and as stated above. (Id.)

The Receiver therefore respectfully requests that the Court authorize and approve the employment and compensation of Allen Matkins as the Receiver's legal counsel in accordance with the terms described herein.

**B. Request for Further Order in Aid of Receivership.**

1. The Court Should Authorize Wieland's Engagement and Compensation.

The Receiver is not a developer, and does not maintain a construction or development consultant on staff. At this time it is the understanding of the Receiver that the principal, non-cash assets of the Receivership Entities are the three Projects, each of which is at a different stage of development, and each of which faces issues that require immediate attention in order to preserve and realize their unique value. The Receiver requires the insight of a construction and development professional in order to determine an appropriate course of action regarding the disposition of the Projects, on matters ranging from preserving existing value, valuation at various stages of construction, and the administration and operationalization of appropriate business plans, if any, for each project. Such insight is necessary for preserving and

1 maximizing the value of the estate of the Receivership Entities, including the  
2 Projects.

3       The Receiver has selected Wieland because the company is highly qualified  
4 to provide the requisite insight on the Projects given its status as one of the nation's  
5 premier construction and construction consultation companies. Wieland provides its  
6 clients with in-depth analyses throughout the feasibility, predevelopment,  
7 development, and disposition phases. This comprehensive approach creates  
8 efficiency in project duration and cost, allowing Wieland to help owners and  
9 investors maximize the value of their property. The Receiver has accordingly  
10 determined, in his reasonable business judgment, that engaging Wieland to serve as  
11 his construction and development consultant is appropriate and necessary to his  
12 administration of the Estate. (Donell Decl., ¶ 9.)

13       Wieland has agreed to serve as the Receiver's construction and development  
14 consultant and will devote attention to the Fontana Project, ultimately providing to  
15 the Receiver an investment pro forma that contemplates selling the Fontana Project  
16 "as-is", constructing the Fontana Project in its current configuration, or continuing  
17 with limited construction at the Fontana Project to preserve its value in anticipation  
18 of a sale. (Donell Decl., ¶ 10.) The Receiver anticipates that Wieland will conduct  
19 a similar analysis for the Hesperia and Lynwood Projects, completing an "as-is"  
20 valuation and "could-be" valuations, contemplating partial and full development of  
21 the project's commercial space. (Id.)

22       Wieland proposes, and the Receiver agrees, that it should bill and be  
23 compensated as a vendor in the ordinary course, billing its ordinary rates of \$75 to  
24 \$350 per hour, using Wieland personnel as well as third-party consultants.<sup>2</sup> The  
25 Receiver respectfully requests that the Court authorize him to compensate Wieland  
26

---

27 <sup>2</sup> The Receiver may engage Wieland independently to be a general contractor, and  
28 in the event that the Receiver does so, that engagement may be subject to a  
different compensation scheme, and will be subject to the terms of a contractor  
agreement.

1 as a vendor in the ordinary course, on an as-invoiced basis, rather than as a  
2 professional service provider subject to the submission of quarterly fee applications.

3 Wieland proposes primarily using the personnel below:

- 4 • Brian Lucas, Sr. Development Manager, Wieland;
- 5 • Craig Wieland, President, Wieland;
- 6 • Jerry Kirkland, VP/Regional Director, Wieland;
- 7 • Administrative Staff, Wieland;
- 8 • Robert Holmes, Managing Partner, THG Advisory;
- 9 • The Concord Group;
- 10 • Adam Seidman, analyst;
- 11 • A consultant retained to evaluate California Office of Statewide Health  
12 Planning and Development issues.

13 (Donell Decl. ¶ 11.)

14 2. Authorization to Employ a Simplified Mandarin Translator.

15 As detailed above, at least forty (40) individuals from China invested in the  
16 Receivership Entities. For this reason, the Receiver requests authority to take  
17 additional steps to keep such investors apprised of the receivership. The Receiver  
18 requests authority from the Court to utilize the services of Morningside,  
19 compensated on an as-invoiced basis, when and as the Receiver deems it necessary  
20 to provide cost-efficient, basic notices to investors in simplified Mandarin in  
21 accordance with the terms of this Motion. The Receiver has selected simplified  
22 rather than traditional Mandarin due to the fact that the Receiver presently believes  
23 the investors are from mainland China, where simplified Mandarin is common.

24 Morningside has indicated that it will translate for a fee of \$0.17/word, or  
25 \$0.22/word on an expedited basis. Morningside is also capable of translating and  
26 transcribing from audio and video files. (Donell Decl., ¶ 12.) Accordingly, the  
27 Receiver proposes, based on his reasonable business judgment, that it would be an  
28 effective and equitable use of Estate resources to employ Morningside as necessary

1 in order to ensure greater communication with the investors in the Entities, given the  
2 national origin and linguistic facility of the investor group.

3 3. Privacy Protection for Investors in the Receivership Entities.

4 Based on the materials obtained by the Receiver to date, the above-captioned  
5 case appears to involve individual investors in the Receivership Entities. In  
6 compliance with Local Rule 5.2-1 and FRCP 5.2, and in order to further protect the  
7 privacy of the investors and to keep their information from public display, the  
8 Receiver requests authority to implement the following procedures:

- 9 • Whenever a certificate of service contains addresses of the investors,  
10 the certificate will use only the first initial and last name of the investor,  
11 and the street address will be redacted before filing with the Court;
- 12 • Any documents containing investor email information will be redacted  
13 before filing with the Court;
- 14 • If and when a Proof of Claim form is devised for the filing of claims  
15 by creditors in this case, including by investors, and should any claim  
16 objection be filed, the Receiver will redact the last four digits of any EIN  
17 (federal employer identification number) and/or social security numbers,  
18 or other national identification card numbers. Similarly, the Receiver will  
19 redact personal account identifiers and, where appropriate, the names of  
20 minor children, before any document is filed with the Court.

21 The Receiver requests that the Court approve these procedures, which will  
22 also apply to materials posted on his website.

23 4. Website Communications.

24 The Receiver proposes to use his website, fedreceiver.com, to post  
25 information about the case and his activities, along with copies of all materials he  
26 files with the Court. The website will be updated regularly with materials filed in  
27 the case, notices to investors, as described below, and related information.

28

1           5.     Relief from the Local Rule 66-5 Requirement to File a Schedule  
2                     of Creditors.

3           Local Rule 66-5 requires the Receiver to file a schedule of names, addresses,  
4 and amounts of claims of all known creditors. Investor and creditor claim amounts  
5 are not known at this time, and because the Receiverships Entities kept inadequate  
6 accounting, financial and banking records, and/or have failed to produce them, an  
7 accounting will need to be completed before investor claims can be properly  
8 determined. (Donell Decl., ¶ 13.) The Receiver has issued numerous subpoenas  
9 and requests for additional records from banking institutions and third parties and is  
10 in the process of coordinating their productions, but the accounting will take some  
11 time to complete. (Id.) Finally, based on the records the Receiver has recovered  
12 and reviewed thus far, the investors appear to be individuals and their personal  
13 information, including their names and addresses, should not be filed publically  
14 absent a compelling need for disclosure. (Id.) Accordingly, the Receiver requests  
15 relief from the requirement under Local Rule 66-5 to file a schedule of known  
16 creditors.

17           6.     Establishment of Service Procedures to Conserve Assets of the  
18                     Estate and Relieve the Receiver from Local Rule 66-7.

19           Local Rule 66-7 requires the Receiver to provide notices, by mail, to all  
20 known creditors, relating to certain petitions, reports, and applications. However,  
21 Estate resources are limited and mailing notices to the investors and creditors, as  
22 required by Local Rule 66-7, imposes significant costs on the Receivership Estate  
23 that would further reduce the assets available for investor recovery. (Donell Decl.,  
24 ¶ 14.) The Appointment Order does not specify a manner of service of notices. (*See*  
25 *Appointment Order, Article V.H.*)

26           The Receiver has concluded in his reasonable business judgment that such  
27 costs are unnecessary given the Receiver's establishment of a receivership website  
28 which is, and will continue to be, updated regularly with pleadings, orders, and other



1 relevant information for investors. (Donell Decl., ¶15.) Accordingly, the Receiver  
2 proposes to provide notices required under Local Rule 66-7 to investors via the  
3 receivership website, and by way of e-mail as the e-mail addresses of individual  
4 investors and creditors are identified. (Id.) The Receiver will establish, maintain,  
5 and update a list of investor e-mail addresses for such notices and remind investors  
6 to provide their updated contact information if and when it changes. (Donell Decl.,  
7 ¶16.) The use of Morningside to provide Mandarin translation services, as provided  
8 above, will facilitate in providing notices to the investors. (Id.)

9 The Receiver requests that service of any such notice on investors and other  
10 interested parties be expressly limited to electronic notice, via a posting on the  
11 Receiver's website and email notice to parties with known email addresses,  
12 wherever possible. This is in order to conserve the Assets of the Estate and to  
13 reduce unnecessary expenses, while still observing the principles of due process.<sup>3</sup>

14 The Receiver's recommendation finds strong support in the law. Although  
15 investors and creditors of the Receivership Entities are not parties to the receivership  
16 case, they must be afforded adequate notice. SEC v. TLC Invs. and Trade Co., 147  
17 F. Supp.2d 1031, 1034-35 (C.D. Cal. 2001); see also In re Gen. Am. Life Ins. Co.  
18 Sales Practices Litig., 375 F.3d 800, 804 (8th Cir. 2004) (Addressing the importance  
19 of notice in class actions, which employ a higher standard for the adequacy of  
20 notice.). Naturally, the requirements of due process vary with the rights at issue.  
21 Matthews v. Eldridge, 424 U.S. 319, 334 (1976) (Due process as a "flexible"  
22 standard that "calls for such procedural protections as the particular situation  
23 demands[.]"). While no specific standards exist regarding providing notices to  
24 investors or other creditors in this context, it is undisputed that adequate notice is  
25 required. Notice is adequate, and meets due process requirements, where it is  
26

27 \_\_\_\_\_  
28 <sup>3</sup> The cost of mailing dozens of individual, hard-copy notices, to say nothing of  
supporting papers, would, in the aggregate, be substantial, especially since the  
investors are domiciled in China.

1 reasonably calculated to apprise interested parties of the pendency of an action and  
2 provide them an opportunity, if appropriate, to be heard. Mullane v. Cent. Hanover  
3 Bank & Trust Co., 339 U.S. 306, 413 (1950).

4 Notice by electronic means has been permitted where it is reasonably  
5 calculated to apprise the recipients of the pendency of the action and provide them  
6 with the opportunity to be heard. In re Int'l Telemedia Assocs., Inc., 245 B.R. 719,  
7 721 (Bankr. N.D. Ga. 2000) (Approving notice via electronic mail in heightened due  
8 process context of criminal proceeding.); Yahoo!, Inc. v. Yahooautos.com and 1865  
9 Other Domain Names, 2006 U.S. Dist. LEXIS 54902, \*10 (E.D. Va. August 8,  
10 2006) (Approving notice via electronic mail in context of *in rem* civil action.).

11 Furthermore, "communication by ... electronic mail [has] become commonplace in  
12 our increasingly global society ... [and] [t]he federal courts are not required to turn a  
13 blind eye to society's embracement of such technological advances."); Telemedia  
14 Assocs., Inc., 245 B.R. at 721.

15 In accordance with such authorities, the Receiver proposes, based on his  
16 reasonable business judgment and efforts to conserve limited Estate resources, to  
17 limit service to the investors and other creditors so that they are noticed only by  
18 timely posting notices of all filings on the Receiver's website and by email,  
19 whenever possible. The electronic notice will contain all documents attached in  
20 "PDF" format. The notice will further provide that the operative pleadings may be  
21 viewed and printed from the Receiver's website or the Court's Pacer site. As stated  
22 above, "communication by...electronic mail [has] become commonplace in our  
23 increasingly global society...[and] [t]he federal courts are not required to turn a  
24 blind eye to society's embracement of such technological advances." Telemedia  
25 Assocs., Inc., 245 B.R. at 721.

26 Moreover, the Receiver recognizes that not all investors and creditors may  
27 possess an email address, or that he may not be able to secure email addresses for all  
28 affected parties. Thus, for the benefit of any investors or other interested parties for



1 whom email addresses either do not exist or cannot be found, the Receiver will also  
2 post instructions on his website for how interested parties can ask to receive hard  
3 copy notice.

4 In the event that any interested party makes such a request, the Receiver will  
5 serve a hard copy of all Receiver notices of filings, by mail, on the party making the  
6 request. Hard copy, mailed notices will provide that the operative pleadings relating  
7 to each notice may be viewed and printed from the Receiver's website or the Court's  
8 Pacer site. Any such notices will also provide that any interested party may further  
9 request hard copies of operative pleadings and supporting documents by contacting  
10 the Receiver, in writing. The Receiver respectfully submits that the recommended  
11 course of action comports with the requirements of due process, while conserving  
12 Estate assets.

13 7. Modifying the Appointment Order Deadline For the Submission  
14 of a Liquidation Plan.

15 Article V.O.3 of the Appointment Order requires that the Receiver file a  
16 Liquidation Plan, as defined therein, outlining his plan for the "fair, reasonable, and  
17 efficient recovery and liquidation of all remaining, recovered, and recoverable  
18 Receivership Property," within ninety (90) days of the entry date of the  
19 Appointment Order, or an alternate date set by the Court upon application by the  
20 Receiver. While the Receiver fully intends to develop recovery and disposition  
21 plans for each of the Projects (and all other Estate assets) in a timely fashion, the  
22 Receiver may need to do so on a piecemeal or less than aggregate basis, as the  
23 issues and exigencies thereof vary by asset. Accordingly, the Receiver respectfully  
24 requests that the Court allow him 180 days from entry of the Appointment Order to  
25 file the Liquidation Plan. (Donell Decl., ¶17.)

26 8. Authorization to Abandon Receivership Property.

27 Article V.K.3 of the Appointment Order authorizes the Receiver to "transfer,  
28 compromise, or otherwise dispose of any Receivership Property, *other than real*

1 *estate*, in the ordinary course of business, on terms and in the manner the Receiver  
2 deems most beneficial to the Receivership Estate...." (emphasis added.) Articles  
3 V.K.4 and 5 of the Appointment Order, on the other hand, include specific  
4 authorizations for the Receiver to market and sell (but not otherwise dispose of)  
5 Estate assets comprised of real property. The Receiver respectfully submits that, in  
6 the event that he determines any real property assets, including the Projects, are  
7 "underwater" or otherwise constitute a net loss or liability to the Receivership  
8 Entities or the Estate, he should be authorized to abandon such assets in accordance  
9 with the intent of Article V.K.3 of the Appointment Order.

10 **V. CONCLUSION.**

11 For the foregoing reasons, the Receiver respectfully requests that this Court  
12 enter an Order in Aid of the Receivership:

13 (1) Authorizing the Receiver to employ and compensate Allen Matkins, as  
14 his general receivership counsel, in accordance with the terms described herein;

15 (2) Authorizing the Receiver to employ and compensate Wieland as his  
16 construction and development consultant, in accordance with the terms described  
17 herein;

18 (3) Authorizing the Receiver to employ a simplified Mandarin translator as  
19 necessary to effectuate the administration of the estate of the Receivership Entities;

20 (4) Authorizing and approving the Receiver's recommended privacy  
21 protection procedures, including specifically that: (a) the Receiver will only use first  
22 initial and last name of investors on certificates of service and will redact their street  
23 addresses before filing with the Court; (b) any documents containing investor email  
24 information will be redacted before filing with the Court; (c) in the case of a Proof  
25 of Claim form filed with the Court, the Receiver will redact all but the last four  
26 digits of any EIN or social security numbers or other national identification card  
27 numbers, as well as personal identifiers and names of minor children on any  
28 documents filed by the Court;

1 (5) Authorizing the Receiver to use his website, fedreceiver.com, to post  
2 information about the case and his activities, in conjunction with or in addition to  
3 electronic notices;

4 (6) Relieving the Receiver of the requirements of Local Rule 66-5 that the  
5 Receiver file a schedule of creditors, due to privacy concerns relating to the  
6 individual investors, and due to the length of time it will take to perform an  
7 accounting;

8 (7) Relieving the Receiver of the requirements of Local Rule 66-7 and  
9 establishing a procedure to provide for electronic service only on all interested  
10 parties, in the form of posting notices of filings to the Receiver's website,  
11 fedreceiver.com, and providing notice of such filings by email, where available,  
12 subject to interested parties' reserving the right to receive service of notices by mail,  
13 if they so request;

14 (8) Providing for a modified schedule for the Receiver to submit a  
15 liquidation plan relating to property of the Receivership Entities; and

16 (9) Authorizing the Receiver to deem abandoned any real property assets  
17 that he determines, in his reasonable business judgment, are "underwater" or  
18 otherwise constitute a net loss or liability to the Estate.

19 The Receiver respectfully submits that, in his reasonable business judgment,  
20 such relief will assist in the efficient and effective administration of the Estate,  
21 thereby conserving its assets for the benefit of all interested parties.

22  
23 Dated: January 28, 2016

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

24  
25  
26 By:           /s/ Joshua A. del Castillo          

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

# **EXHIBIT A**



## ABOUT

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[About >> Our Firm](#)

### OUR FIRM

At Allen Matkins, we help clients capitalize on opportunity.

Whether this opportunity comes from overcoming challenges or seeing and taking advantage of new technologies, business models, or global markets, we partner with clients to accomplish goals and drive success.

We are a premier California-based law firm specializing in real estate, litigation, labor, tax, and business law, with more than 200 attorneys in four major metropolitan areas of California: Los Angeles, Orange County, San Francisco and San Diego. From our base in California, we also serve the needs of our clients, whose interests are national and increasingly global.

For more than 30 years, we've worked with clients drawn to us by our reputation for creative solutions, pragmatism, exemplary quality, and approachability, and our unparalleled network of contacts and connections in business and government.

If we had to pride ourselves on just one thing, it would be our relationships with our clients who've entrusted us with their security, their livelihoods, and their aspirations. We look to honor them in everything we do.

# **EXHIBIT B**

**CATALOGUE OF FIRM RECEIVERSHIP ACTIONS**

ALLEN MATKINS LECK GAMBLE MALLORY &amp; NATSIS LLP

YEAR	CASE NAME	VENUE
2015	SEC v. Yang; Yanrob's Medical, Inc., et al.,	USDC, Central District of California (Los Angeles), No. 5:15-cv-02387-SVW (KKx)
2015	SEC v. Path America, LLC, et al.	USDC, Western District of Washington (Seattle), No. c-15-1350-JLR
2015	SEC v. Chen, USFIA, Inc., et al.	USDC, Central District of California (Los Angeles), No. 2:15-cv-07425-RGK-GJSx
2015	SEC v. Total Wealth Management, Inc., et al.,	USDC, Southern District of California No. 15-cv-226 BAS (DHB)
2014	SEC v. World Capital Market, Inc., et al.,	USDC, Central District of California (Los Angeles), No. 2:14-cv-02334-JFW-MRW
2013	SEC v. Yin Nan "Michael" Wang, Velocity Investment Group, Inc., et al.,	USDC, Central District of California (Los Angeles), No. 13-cv-07553-JAK (SSx)
2012	SEC v. Small Business Capital Corp.; Mark Feathers; Investors Prime Fund, LLC, et al.,	USDC, Northern District of California (San Jose), No. 5:12-cv-03237-EDJ
2012	SEC v. Louis V. Schooler; First Financial Planning Corporation dba Western Financial Planning Corporation	USDC, Southern District of California, No. 12CV2164-LAB
2010	SEC v. Advanced Money, Inc.; Moises Pacheco, et al.,	USDC, Southern District of California
2009	SEC v. Medical Capital Holdings, Inc., et al.,	USDC, Central District of California (Santa Ana)
2009	SEC v. Sunwest Management, Inc., et al.,	USDC, District of Oregon (Portland)
2008	SEC v. Robert Louis Carver; Lincoln Funds International, Inc.	USDC, Central District of California (Santa Ana)
2008	SEC v. Plus Money, Inc.; Matthew LaMadrid, et al.,	USDC, Southern District of California
2008	SEC v. Tuco Trading, LLC	USDC, Southern District of California
2008	SEC v. Safevest, LLC; John G. Ervin; John V. Slye	USDC, Central District of California (Santa Ana), No. SACV08-00473 JVS
2007	SEC v. Global Online Direct	USDC, Northern District of Georgia
2007	SEC v. Trabulse	USDC, Northern District of California (San Francisco)
2006	SEC v. Credit First Fund	USDC, Central District of California (Los Angeles)
2006	SEC v. Charis Johnson; 12Daily Pro	USDC, Central District of California
2006	SEC v. Rhodes	USDC, District of Oregon (Portland)
2004	SEC v. Presto Telecommunication	USDC, Southern District of California
2004	SEC v. Rose Fund	USDC, Northern District of California (San Francisco)

YEAR	CASE NAME	VENUE
2004	SEC v. Learn Waterhouse, Inc.	USDC, Southern District of California
2002	SEC v. Alpha Telcom; Rubera, et al.,	USDC, District of Oregon (Portland), No. 01-cv-01283-PA
2002	SEC v. Health Maintenance Centers, Inc.; Znetix, et al.,	USDC, District of Washington (Seattle)
2001	SEC v. Pinnfund USA	USDC, Southern District of California
2000	SEC v. Capital Consultants, LLC; Jeffrey Grayson	USDC, District of Oregon (Portland)

### **FEDERAL TRADE COMMISSION**

YEAR	CASE NAME	VENUE
2012	FTC v. Consumer Advocates Group Experts, LLC	USDC, Central District of California (Los Angeles), No.
2009	FTC v. MCS Programs, LLC, et al.,	USDC, Western District of Washington (Tacoma)
2007	FTC v. Merchant Processing, Inc., et al.,	USDC, District of Oregon

### **U.S. COMMODITY FUTURES TRADING COMMISSION ("CFTC")**

YEAR	CASE NAME	VENUE
2008	U.S. Commodity Futures Trading Commission v. Safevest, LLC; Jon G. Ervin; John V. Slye	USDC, Central District of California (Santa Ana)



# **EXHIBIT C**

# Allen Matkins

CHALLENGE. OPPORTUNITY. SUCCESS.



**JOSHUA A. DEL  
CASTILLO**

## BIOGRAPHY

Joshua A. del Castillo is a litigation, creditors' rights, and regulatory compliance attorney practicing in the Firm's Receiverships, Lenders & Special Creditor Remedies; Restructuring, Insolvency & Bankruptcy; and Corporate Finance practice groups. Joshua's practice includes general business litigation, bankruptcy and receiverships, and regulatory compliance. Joshua represents a wide range of clients including banks and other institutional lenders, developers, receivers, monitors, secured and unsecured creditors, and other business enterprises.

Joshua has served as general litigation counsel for institutional lenders and administrators of securitized trusts throughout the state and federal court systems in California, including in connection with actions challenging the enforceability of securitized loans and associated security instruments, and frequently represents creditors in related bankruptcy proceedings. In this context, Joshua has developed significant experience in defending against efforts to divest secured creditors of their statutory and contractual rights, as well as supervising other counsel in similar matters nationwide.

Joshua also regularly serves as counsel for court-appointed permanent receivers in enforcement actions brought by the Securities and Exchange Commission, Federal Trade Commission, and other federal agencies, including in actions alleging the operation of Ponzi-like investment schemes or fraudulent business practices. Joshua's receiver clients are regularly tasked with taking over the entities used to perpetrate a fraud or other unlawful conduct, conducting necessary forensic accountings, documenting (for the benefit of the appointing court) the unlawful conduct itself, and recovering available proceeds for distribution, where possible. Joshua likewise maintains an active real property receivership practice, advising lender and receiver clients on the propriety of a receivership for a given circumstance and on the management and disposition of receivership estate property. In this context, Joshua has secured the appointment of receivers in hotly contested real property disputes and assisted real property receivers with the administration of environmentally compromised and other unusual commercial properties, including in connection with efforts to sell such properties out of receivership.

Joshua further maintains a growing regulatory compliance practice, with a focus on the Dodd-Frank Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, Real Estate Settlement Procedures Act, and other related federal and state statutes. Joshua has successfully represented lenders and other business enterprises in litigation alleging regulatory violations, as well as provided regulatory compliance and analysis advice to lenders, investment and telecommunications companies, public interest organizations, and others.

Joshua has represented clients before state and federal courts throughout California, including the California Court of Appeal, the United States Bankruptcy Appellate Panel of the Ninth Circuit, and the Ninth Circuit Court of Appeals.

Joshua has been an active participant in and advocate for *pro bono* work since his arrival at Allen Matkins, and presently serves as a *pro bono* bankruptcy and litigation advisor to the Wage Justice Center, a public-interest organization that collaborates with community groups, workers' centers and legal services providers to advance low-income workers' rights, educate workers, and advocate on the law and best practices for collecting unpaid wages. Joshua has also represented clients, *pro bono*, in Constitutional rights, creditors' rights, regulatory compliance, and securities matters.

## MEMBERSHIPS

- Financial Lawyers Conference
- California Receivers Forum
- Hispanic National Bar Association
- National Association of Federal Equity Receivers

## ACCOLADES

- *Pro Bono* Award, Wage Justice Center (2009)
- Selected for inclusion in *Super Lawyers'* Southern California *Rising Stars* (2012 - 2015)



## EDUCATION

Joshua received his B.A. in economics, *cum laude*, from the University of Southern California in 1996. He received his M.A. in anthropology, with a subspecialty in economic anthropology and development, from the University of Michigan in 1998, advancing to Ph.D. candidacy in 2000. In 2005, Joshua received his J.D. from University of Southern California Gould School of Law.

While in law school, Joshua was awarded an Olin Foundation/USC Center for Law, Economics, and Organization scholarship, and was selected as a member of the inaugural class of USC Law School Summer Fellows. In addition, Joshua was a member of the law school's Hale Moot Court Honors Program, placing as a semi-finalist, and later served as an editor on the Hale Moot Court Board and was a member of the USC National Moot Court team.

## BAR ADMISSIONS

- California

## COURT ADMISSIONS

- All California state courts
- U.S. District Court, Northern District of California (including Bankruptcy Court)
- U.S. District Court, Eastern District of California (including Bankruptcy Court)
- U.S. District Court, Central District of California (including Bankruptcy Court)
- U.S. District Court, Southern District of California (including Bankruptcy Court)
- Ninth Circuit Court of Appeals
- United States Bankruptcy Appellate Panel of the Ninth Circuit
- Supreme Court of the United States

## REPRESENTATIVE MATTERS

### Litigation and Bankruptcy

- **Commercial Lenders.** Represented a national, commercial lender in connection with a large bankruptcy and breach of contract dispute, in both state and federal courts.
- **Developers.** Represented national developers in connection with preferential transfer claims brought by bankruptcy trustees.
- **Law Firms.** Represented a national law firm in connection with the bankruptcy of a large client.
- **Mortgage Lenders.** Represented a number of the nation's largest mortgage lenders in multiple commercial litigation matters, in both state and federal courts, including courts of appeal.
- **Non-Profit Organizations.** Provided *pro bono* assistance to a non-profit organization representing indigent and low-income workers in employment disputes.

### Federal Equity Receiverships

- ***Securities and Exchange Commission v. Plus Money, Inc., et al.*, (U.S. District Court, Southern District of California).** Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a \$45 million Ponzi-like investment scheme based on purported covered-call option trading. Receiver marshaled assets and distributed funds to defrauded investors.
- ***Securities and Exchange Commission v. Pacheco, et al.*, (U.S. District Court, Southern District of California).** Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a \$15 million Ponzi-like investment scheme based on purported covered-call option trading. Receiver marshaled assets and distributed funds to defrauded investors.
- ***Securities and Exchange Commission v. Medical Capital Holding, et al.*, (U.S. District Court, Central District of California).** Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging a Ponzi-like investment scheme which raised over \$1 billion, ostensibly to purchase medical receivables.
- ***Securities and Exchange Commission v. Global Online Direct, Inc., et al.*, (U.S. District Court, Northern District of Georgia).** Represented a receiver appointed in a Securities and Exchange Commission enforcement action alleging that the defendant entities raised over \$45 million through the sale of unregistered securities.
- ***Securities and Exchange Commission v. Trabulse, et al.*, (U.S. District Court, Northern District of California).** Represented a receiver appointed to monitor a hedge fund, at the request of the Securities and Exchange Commission.
- ***Federal Trade Commission v. Consumer Advocates Group, LLC, et al.*, (U.S. District Court, Northern District of California).** Represented a receiver appointed to monitor a hedge fund, at the request of the Securities and Exchange Commission.

**Court, Southern District of California).** Represented a receiver appointed at the request of the Federal Trade Commission in connection with an enforcement action alleging deceptive and fraudulent mortgage modification practices.

#### Real Property Receiverships

- **Excel National Bank v. Tolosa Sison Family Corp., et al., (Superior Court of California, County of San Mateo).** Represented a real property receiver appointed to administer receivership estate substantially comprised of service station and convenience store assets.
- **First Citizens Bank & Trust Co. v. NDustrial Drive LLC, et al., (Superior Court of California, County of San Joaquin).** Represented a real property receiver appointed to administer receivership estate substantially comprised of abandoned recycling facility. Assisted receiver with site clean-up, marketing, and sale efforts.
- **Wachovia Bank, NA v. Downtown Sunnyvale Residential, LLC, et al., (Superior Court of California, County of Santa Clara).** Represented a real property receiver appointed over a large-scale commercial development in connection with successfully securing trial court approval of the receiver's administration and improvement of the development, as well as approval of the receiver's compensation and discharge request.

#### Regulatory Compliance

- **Real Property Brokerage.** Represented one of the Southwest's largest real property brokerages in connection with litigation alleging a violation of federal consumer protection statutes.
- **Lenders and Institutional Investors.** Represented lender in connection with litigation alleging systematic violations of the Fair Credit Reporting Act. Represented national institutional investor in connection with revision of internal policies and procedures for compliance with new or revised consumer protection statutes.
- **Telecommunications Business.** Represented cell tower leasing entity in connection with policies and procedures for compliance with new or revised consumer protection statutes.
- **Public Interest Organizations.** Provided analysis of applicability of provisions of Dodd-Frank Act to highly publicized business practices of so-called buy-here / pay-here automobile dealerships.

#### EVENTS

[California Bankruptcy Forum's 26th Annual Insolvency Conference](#)

5/16/2014

**Speakers:** [Joshua A. del Castillo](#) and [Ted G. Fates](#)

#### PUBLICATIONS

##### LEGAL ALERTS

- 21-Dec-2015 [Evolving Home-Sharing Market Prompts a Variety of Local Regulations](#)
- 18-May-2015 [Two Recent Decisions Potentially Expand Fraudulent Transfer Exposure in Ponzi Schemes](#)
- 02-Dec-2014 [Financial Institutions May Post Online Privacy Disclosures](#)
- 18-Dec-2013 [New California Court of Appeal Decision Reaffirms General Rule that Residential Lenders Owe no Duty to Borrowers, Including in the Loan Modification Context](#)
- 16-Apr-2013 [New California Court of Appeal Decision May Affect Administration of Foreclosure-Avoidance Actions](#)
- 17-Sep-2012 [Recent Ninth Circuit Decision Emphasizes Importance Of Remaining Vigilant – And Current – In Connection With Consumer Finance Regulation Compliance](#)

- 20-Jul-2012 ["Who is going to pay for this?"](#)  
[California Court of Appeal Highlights Receiver  
Compensation Issues](#)
- 01-Feb-2012 [Recent Seventh and Ninth Circuit Cases Affect Federal  
Equity Receiverships](#)
- 17-Aug-2011 [California Superior Court Invalidates Receiver's Sale of  
Real Property Holding That the Sale of Collateral Over  
the Objection of the Borrower is Tantamount to  
Foreclosure](#)  
This alert applies to secured lenders and court-appointed  
real property receivers considering the disposition of  
receivership estate property by receiver's sale.

## ARTICLES

- 15-Dec-  
2015 [The Evolving Home-Sharing Market Prompts a Variety of  
Local Regulations](#)  
By Joshua A. del Castillo, Tim C. Hsu and Timothy M.  
Hutter in *Western Real Estate Business*
- 20-May-  
2015 [Unwitting transfers to Ponzi schemes](#)  
by Joshua A. del Castillo and Ted G. Fates in *Daily  
Journal*
- 01-Dec-  
2014 [What Flagstar Bank Can Teach Mortgage Servicers and  
Others About the CFPB](#)  
By Joshua A. del Castillo and Kenyon D. Harbison in  
*California Mortgage Finance News*
- 27-May-  
2014 [Update on Evolving California Homeowner's Bill of Rights  
Case Law](#)  
By Joshua A. del Castillo and Kenyon Harbison in  
*California Mortgage Finance News*
- 01-Sep-2013 [California Foreclosure Proceedings: Recent court  
decisions may illustrate trends in foreclosure-avoidance  
actions](#)  
By Joshua A. del Castillo and Tim C. Hsu in *Scotsman  
Guide Residential Edition*
- 01-Jul-2013 [Adverse Action Notices in a Fluid Regulatory  
Environment](#)  
By Joshua A. del Castillo and Kenyon Harbison in *CMBA  
Legal News*
- 02-Jan-2013 [For Sale by Receiver](#)  
By Joshua A. del Castillo, co-author, in *Scotsman Guide*
- 27-Feb-2012 [Sales by Rents and Profits Receivers: A Discussion of  
the Practice and Governing Law](#)  
By Joshua A. del Castillo, co-author, in *Receivership  
News*
- 06-Feb-2012 [7th, 9th Circuit Cases To Affect Federal Equity  
Receiverships](#)  
By Joshua A. del Castillo and Ted G. Fates in *Daily*

*Journal*

- 23-Jun-2010 [Respecting Foreclosure: Section 2923.5 Remedies Clarified](#)  
By Joshua A. del Castillo and Kenyon D. Harbison in *Los Angeles Daily Journal*
- 01-Jan-2008 [The New Age of Real Estate Loan Defaults](#)  
By Joshua A. del Castillo, co-author in *Real Property Law Reporter*

**PRESS & MEDIA**

- 26-May-2015 [Lawyers React To Justices' Ruling On Bankruptcy Court Power](#)  
Joshua del Castillo in *Law360*
- 03-Jul-2014 [55 Allen Matkins Attorneys Named Among Super Lawyers and Rising Stars 2014](#)
- 11-Jul-2013 [60 Allen Matkins Attorneys Named Among Super Lawyers 2013 and Rising Stars 2013](#)
- 19-Jul-2012 [61 Allen Matkins Attorneys Named Among Super Lawyers 2012 and Rising Stars 2012](#)  
More Than 40 Percent of Firm's Partners Make the List

**VIDEOS**

- 08-Jan-2013 [The FCRA, ECOA and the Consumer Financial Protection Bureau: Two Areas of Ambiguity the Bureau May Address](#)

# **EXHIBIT D**

# Allen Matkins

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**DAVID R. ZARO**

## BIOGRAPHY

David R. Zaro is a partner in our Los Angeles office, where his practice focuses upon litigation with an emphasis upon creditors' rights, bankruptcy litigation, and state and federal receiverships. David represents a wide range of clients including banks and other institutional lenders, developers, landlords, receivers, examiners, secured and unsecured creditors, and other business enterprises.

David has extensive experience as a bankruptcy lawyer as well as a trial lawyer in federal and state courts in California and several other jurisdictions. His experience in the field of insolvency, creditors' rights, and bankruptcy litigation includes out-of-court workouts and restructurings, federal and state court receiverships, and bankruptcy reorganization proceedings. David also advises residential and commercial lenders and others regarding all aspects of commercial law with regard to commercial and residential mortgage litigation, bank regulatory disputes, and collection actions.

David's representative cases include the representation of Court Appointed Receivers in a \$1.2 billion fraud action brought by the Securities and Exchange Commission in connection with the sale of TIC and other interests in 300 assisted living facilities; and a \$750 million ponzi-like scheme involving the purchase of medical related receivables and related lending transactions; representation of lender in workout of mezzanine financing on a multi-building office park; defense of actions in bankruptcy by junior lienholder and debtor against lender on a industrial park; and structure lease termination and modifications for commercial and retail tenants both in and out of bankruptcy.

David has lectured on matters regarding residential and commercial mortgage litigation and workouts, creditors' rights, construction law, and other real property remedies.

## MEMBERSHIPS

- Financial Lawyers Conference
- American Bankruptcy Institute
- Turnaround Management Association

## ACCOLADES

- Awarded Turnaround Management Association's Transaction of the Year- Large Turnaround Award (2011)

## EDUCATION

David received his B.A. from Stanford University and obtained his J.D. from the University of California, Hastings College of The Law.

## BAR ADMISSIONS

- California

## COURT ADMISSIONS

- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, District of Arizona
- California Supreme Court
- U.S. Ninth Circuit Court of Appeals
- U.S. Supreme Court

## REPRESENTATIVE MATTERS

### Bank Representation

- **Residential and Commercial Bank.** Represented a residential and commercial bank in defending several thousand lawsuits throughout California and managed local counsel in 20



other states. The lawsuits concern allegations of mortgage fraud, wrongful foreclosure, violations of TILA, RESPA, HOSPA, and other statutory and regulatory issues.

- **Residential and Commercial Lender.** Represented a residential and commercial lender in the workout and collection of a portfolio of commercial loans exceeding \$1 billion.
- **Residential and Commercial Lender.** Represented a residential and commercial lender as to the workout and collections of a portfolio of construction loans. Some loans involving completed projects as well as those in progress.

#### Receiverships Cases

- **Federal Trade Commission v. MCS Programs, LLC, et al., U.S. District Court, Western District of Washington.** Represented the receiver in this Internet and telemarketing fraud involving a so-called debt reduction program and credit repair scheme, operating out of multiple locations. Receiver marshaled assets and liquidated and returned funds to the FTC for distribution to victims.
- **Federal Trade Commission v. Merchant Processing, Inc., et al., U.S. District Court, Oregon.** Represented the receiver appointed at the request of the FTC in connection with a fraudulent scheme involving the sale of credit and debit card merchant account services and leasing related equipment. Successfully turned around the enterprise, marshaled assets, and operated and liquidated the enterprise returning substantial funds to the victims and FTC.
- **U.S. Commodity Futures Trading Commission v. Safevest, LLC, et al., U.S. District Court, Central District of California.** Represented the receiver appointed jointly by the CFTC and the SEC in an action involving an Internet and telemarketing fraud which raised in excess of \$25 million purportedly to purchase commodities and futures contracts. This was a ponzi scheme in which no trades were made.
- **SEC v. Sunwest Management, U.S. District Court, Oregon.** Represented the receiver appointed at the request of the SEC for an enterprise involving \$1.2 billion in assets and liabilities. The enterprise involved selling TIC and LLC interest in approximately 300 assisted living facilities.
- **SEC v. Medical Capital Holding, U.S. District Court, Central District of California.** Represented the receiver appointed at the request of the SEC with regard to ponzi-like scheme which raised over \$1 billion ostensibly to purchase medical receivables.
- **SEC v. Global Online Direct, Inc., U.S. District Court, Northern District of Georgia.** Represented the receiver appointed at the request of the SEC for a company raising over \$45 million through the sale of alleged unregistered securities.
- **SEC v. Trabulse, et al., U.S. District Court, Northern District of California.** Represented the receiver appointed at the request of the SEC for a hedge fund.
- **SEC v. C. Wesley Rhodes, Jr. et al., U.S. District Court, Portland.** Represented the receiver appointed at the request of the SEC for an investment advisor.
- **SEC v. Credit First Fund, U.S. District Court, Central District of California.** Represented the receiver appointed at the request of the SEC for the operator of distressed consumer debt portfolios.

#### EVENTS

[The State Bar of California-Real Property Section - 28th Annual Retreat](#)

5/15/2009

**Speakers:** [Thomas W. Henning](#) and [David R. Zaro](#)

[ABI - Bankruptcy Battleground West Conference](#)

3/13/2009

**Speakers:** [David R. Zaro](#)

# **EXHIBIT E**

# Allen Matkins

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**KENYON D.  
HARBISON**

## BIOGRAPHY

Kenyon D. Harbison practices in the areas of real estate, insurance, and general corporate-related litigation, including litigation in bankruptcy courts. He has worked in all phases of litigation, from initial pleadings through discovery, trial, and appeal in state, federal, and federal bankruptcy court proceedings. His cases have related to commercial lease disputes, insurance recovery, soil contamination, construction defect litigation, and partnership disputes, among other subjects.

Kenyon has extensive understanding of the federal Truth in Lending Act, the Real Estate Settlement Procedures Act, FDIC regulations, the federal Fair Credit Reporting Act, the federal Fair Debt Collection Practices Act and the California Rosenthal Act, foreclosure litigation pursuant to California Civil Code section 2924 et seq., all major areas of fundamental California common law, the California Insurance Code, and litigation in federal bankruptcy adversary proceedings.

## MEMBERSHIPS

- State Bar of California, Real Property Law Section

## COMMUNITY ACTIVITIES

Kenyon serves on the Board of Directors of the West Pasadena Residents' Association. Founded in 1962, the WPRA is dedicated to maintaining and enhancing the character of the community and quality of life in West Pasadena. It informs residents of current issues, and represents the interest of the residents in discussions with the City of Pasadena and with other entities and stakeholders.

## EDUCATION

Kenyon received his B.A. in English literature, with distinction in his major, from Yale University in 2000, before which he was a United States Presidential Scholar from Montana. Kenyon received his J.D. from UCLA School of Law.

At UCLA School of Law, Kenyon was a staff member and a managing editor of the *UCLA Law Review*, was chosen as a student instructor of legal writing, and was made a member of The Order of the Coif. He also served as a research assistant to Professor Joanna Schwartz and he externed for the Honorable Paul Boland of the California Court of Appeal, Second District.

After practicing law at Allen Matkins for nearly a year, Kenyon took a leave of absence and clerked for the Honorable Florence-Marie Cooper of the U.S. District Court, Central District of California, after which he returned to Allen Matkins.

## BAR ADMISSIONS

- California

## COURT ADMISSIONS

- All California state courts
- U.S. District Court, Northern District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California
- Ninth Circuit Court of Appeals

## EVENTS

[IMN West Coast Real Estate General Counsel Forum](#)

5/5/2014

**Speakers:** [Mark R. Hartney](#), [Fernando Villa](#) and [Kenyon D. Harbison](#)

## PUBLICATIONS

### ARTICLES

01-Dec- [What Flagstar Bank Can Teach Mortgage Servicers and](#)

- 2014 [Others About the CFPB](#)  
By Joshua A. del Castillo and Kenyon D. Harbison in  
*California Mortgage Finance News*
- 27-May-2014 [Update on Evolving California Homeowner's Bill of Rights Case Law](#)  
By Joshua A. del Castillo and Kenyon Harbison in  
*California Mortgage Finance News*
- 01-Jul-2013 [Adverse Action Notices in a Fluid Regulatory Environment](#)  
By Joshua A. del Castillo and Kenyon Harbison in *CMBA Legal News*
- 27-Mar-2013 [Reader Alert – New Truth in Lending Rules Are Shadowed in Doubt](#)  
By Kenyon Harbison in State Bar of California Real Property Law Section E-Bulletin
- 23-Jul-2012 [Coke vs. SodaStream: are there trademarks in trash?](#)  
By Kenyon Harbison in *Daily Journal*
- 23-Jun-2010 [Respecting Foreclosure: Section 2923.5 Remedies Clarified](#)  
By Joshua A. del Castillo and Kenyon D. Harbison in *Los Angeles Daily Journal*
- 01-Apr-2008 [Are Contingent Fee Attorneys Deterred? How Courts Can More Effectively Police Adhesive Arbitration Agreements](#)  
By Kenyon D. Harbison in *Appalachian Journal of Law*

## **VIDEOS**

- 08-Jan-2013 [The FCRA, ECOA and the Consumer Financial Protection Bureau: Two Areas of Ambiguity the Bureau May Address](#)

# **EXHIBIT F**

# Allen Matkins

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**MELISSA K.  
ZONNE**

## **BIOGRAPHY**

Melissa K. Zonne is a litigation associate in our Los Angeles office. She practices commercial and business litigation, with an emphasis on labor and employment, real estate, receiverships, and construction. As part of her work in the Labor & Employment Practice Group, Melissa has assisted in successfully defending against matters involving a variety of discrimination claims and wage and hour violations, including class actions. Melissa has experience in motion preparation and drafting, as well as experience drafting briefs on the appellate level. She also has experience in civil discovery, including depositions, written discovery and resolution of discovery disputes.

## **EDUCATION**

Melissa received her B.A. in public relations, with a minor in business administration, from University of Southern California. She received her J.D. from the University of Southern California Gould School of Law. While in law school, Melissa was the Chair of the Hale Moot Court Honors Program.

Melissa was previously a summer associate at Allen Matkins.

## **BAR ADMISSIONS**

- California

1 **PROOF OF SERVICE**

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

4 I am employed in the County of Los Angeles, State of California. I am over  
5 the age of 18 and not a party to the within action. My business address is 515  
6 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

7 A true and correct copy of the foregoing document(s) described below will be  
8 served in the manner indicated below:

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
10 **MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER IN AID**  
11 **OF RECEIVERSHIP**

12 1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC**  
13 **FILING ("NEF")** – the above-described document will be served by the Court  
14 via NEF. On **January 28, 2016**, I reviewed the CM/ECF Mailing Info For A  
15 Case for this case and determined that the following person(s) are on the  
16 Electronic Mail Notice List to receive NEF transmission at the email  
17 address(es) indicated below:

- 18 • **Zachary T. Carlyle**  
19 carlylez@sec.gov, kasperg@sec.gov, karpeli@sec.gov,  
20 blomgrene@sec.gov, pinkstonm@sec.gov, NesvigN@sec.gov
- 21 • **Stephen J. Donell**  
22 jdelcastillo@allenmatkins.com
- 23 • **Mark T. Hiraide**  
24 mhiraide@hiraidelaw.com, kju@phlcorplaw.com,  
25 hitabashi@phlcorplaw.com, eganous@phlcorplaw.com
- 26 • **David J. Van Havermaat**  
27 vanhavermaatd@sec.gov, larofiling@sec.gov, berryj@sec.vog,  
28 irwinma@sec.gov

29 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for**  
30 **each person or entity served)**: On \_\_\_\_\_, I served the following person(s)  
31 and/or entity(ies) in this case by placing a true and correct copy thereof in a  
32 sealed envelope(s) addressed as indicated below. I am readily familiar with  
33 this firm's practice of collection and processing correspondence for mailing.  
34 Under that practice it is deposited with the U.S. postal service on that same day  
35 in the ordinary course of business. I am aware that on motion for party served,



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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.

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 **January 28, 2016** at Los Angeles, California.

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