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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14
15 v.

16 ROBERT YANG, et al.,

17 Defendants,

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

20 Relief Defendants.

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

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

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

Date: January 7, 2019
Time: 1:30 p.m.
Ctrm: 10A
Judge: Hon. Stephen V. Wilson

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Stephen J. Donell (the "Receiver"), the permanent receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the "Receivership Entities") his counsel of record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins") and his accountants, SL Biggs, a Division of Singer Lewak ("SL Biggs"), hereby respectfully request that the Court grant their collective Sixth Interim Application for Payment of Fees and Reimbursement of Expenses (the "Application"), for fees and expenses incurred by the Receiver and his professionals from the 15-month period of April 1, 2017 through July 31, 2018 (the "Application Period"). Pursuant to the Application, the Receiver, Allen Matkins, and SL Biggs seek approval of all of their respective fees and expenses incurred during the Application Period, as follows:

<u>Applicant</u>	<u>Current Fees</u>	<u>Current Expenses</u>	<u>Total Amount Requested for Approval</u>
Receiver	\$107,177.08	\$403.45	\$107,580.53
Allen Matkins	\$322,341.40	\$5,550.98	\$327,892.38
SL Biggs	\$1,440.00	0	\$1,440.00
<u>TOTAL:</u>	\$430,958.48	\$5,954.43	\$436,912.91

The Receiver seeks authorization to pay himself 90% of the approved fees and 100% of the approved expenses from the assets of the Receivership Entities, on an interim basis. Additionally, the Receiver seeks authorization to pay Allen Matkins 80% of the approved fees and 100% of the approved expenses from the assets of the Receivership Entities, on an interim basis. Finally, the Receiver seeks authorization to pay SL Biggs 100% of its fees, which arose in connection with accounting services and the sale of one real property Asset.

1 The respective amounts of fees and expenses incurred from April 1, 2017
2 through July 31, 2018 that are currently requested for payment are as follows:

3

<u>Applicant</u>	<u>Current Fees Requested for Payment</u>	<u>Current Expenses Requested for Payment</u>	<u>Total Amount Requested for Payment</u>
Receiver	\$96,459.37	\$403.45	\$96,862.82
Allen Matkins	\$257,873.10	\$5,550.98	\$263,424.10
SL Biggs	\$1,440.00	0	\$1,440.00
<u>TOTAL:</u>	\$425,791.75	\$5,954.43	\$361,726.90

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

18 **II. RELEVANT FACTUAL BACKGROUND.**

19 While a full recitation of the procedural history of this matter is unnecessary
20 for the purposes of the Application, and is presented completely in the Receiver's
21 December 23, 2015 Initial Report Re: Marshaling and Preservation of Receivership
22 Assets, and Petition for Further Instructions (the "Initial Report"), the April 18, 2016
23 First Quarterly Status Report (the "Interim Report"), the August 15, 2016 Second
24 Quarterly Status Report ("Second Interim Report"), the January 9, 2017 Third
25 Quarterly Status Report ("Third Interim Report"), the May 25, 2017 Fourth
26 Quarterly Status Report ("Fourth Interim Report"), and the January 10, 2018 Fifth
27 Quarterly Status Report ("Fifth Interim Report"), and November 5, 2018 Sixth
28 Quarterly Status Report ("Sixth Interim Report") each of which summarize the

1 efforts of the Receiver and his professionals¹ since the commencement of the instant
2 receivership. The facts most relevant to the Application are as follows:

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

13 The Receiver filed his Initial Report on December 23, 2015. (See Dkt.
14 No. 20.) On March 8, 2016, the Court entered its Order in Aid of Receivership,
15 clarifying certain administrative matters and providing the Receiver with specific
16 authority regarding communications with Receivership Entity investors, providing
17 for the protection of private information, and granting the Receiver authority to
18 abandon receivership estate assets he determines are "underwater" or represent a net
19 loss or liability to the Receivership Entities. (See Dkt. No. 46.) The Receiver filed
20 his Interim Report, which included a Forensic Accounting Report, on April 18,
21 2016. (See Dkt. Nos. 53, 53-2.) He submitted an Amended Forensic Accounting
22 Report to the Court on May 20, 2016. (See Dkt. Nos. 69, 69-1.) The Receiver filed
23 his Second Interim Report on August 15, 2016. (See Dkt. No. 129.) The Receiver
24 filed his Third Interim Report on January 9, 2017. (See Dkt. No. 150.) The
25 Receiver filed his Fourth Interim Report on May 25, 2017. (See Dkt. No. 174.) The
26 Receiver filed his Fifth Interim Report on January 10, 2018 (See Dkt. No. 216.)

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

1 The Receiver filed his Sixth Interim Report on November 5, 2018. (See Dkt.
2 No. 237.)

3 As reflected in the Initial Report, the Interim Report, the Second Interim
4 Report, the Third Interim Report, the Fourth Interim Report, the Fifth Interim
5 Report, the Sixth Interim Report, and in materials filed concurrently herewith, since
6 his appointment as Receiver, and despite facing significant challenges including the
7 production of incomplete and inaccurate records and information by Defendants,
8 interference by would-be creditors, and the complexity of the Entities' business and
9 financial activities, the Receiver has, among other things:

- 10 • Continued to administer the estate of the Receivership Entities (the
11 "Estate") and their Assets. Based on the Receiver's most recent,
12 finalized Standardized Fund Accounting Report ("SFAR"), the Estate is
13 presently funded in the amount of \$3,596,516.40;
- 14 • Preserved and, indeed, maximized the value of the Estate's two (2)
15 valuable real property Assets (collectively, the "Properties") by, among
16 other things, engaging in extensive marketing of each of the Properties
17 to make an appropriate market, working through an extensive list of
18 interested parties to secure the highest and best offers for the
19 Properties, ensuring back-up offers remained in place to ensure that
20 value was received for the Properties even where an anticipated buyer
21 failed to get to closing, and – with respect to one of the Properties –
22 working extensively to address pre-receivership zoning and easement
23 issues in order to secure offers *in excess* of what was spent for that
24 Property by the Receivership Entities;
- 25 • Successfully concluded the Court-approved sales of the Properties,
26 resulting in net proceeds to the Estate of approximately \$2.3 million;
- 27 • Coordinated with Plaintiff, the U.S. Securities and Exchange
28 Commission (the "Commission"), Mason Investments LLC ("Mason"),

1 an entity the Receiver previously identified as the Entities' finder and
2 against whom the Receivership Entities were preparing a claim for
3 millions of dollars in disgorgement, and Mason's principal, in
4 connection with a payment from Mason to the Receiver in the amount
5 of approximately \$2.6 million;

- 6 • Prepared and submitted periodic Interim Reports;
- 7 • Communicated with investors in and creditors of the Receivership
8 Entities, and their respective counsel, regarding the status of the
9 Receiver's Estate administration and Asset sale efforts, as well as the
10 Receiver's progress in reviewing and processing investor and creditor
11 claims for payment submitted in accordance with the streamlined
12 claims procedures previously approved by the Court;
- 13 • Resolved issues arising in connection with the claim of Celtic Bank
14 Corporation ("Celtic Bank") by stipulation, resulting the Entities'
15 satisfying Celtic Bank's claim against the Estate in a manner that
16 permitted the Entities to retain \$400,000.00 from funds initially turned
17 over by Celtic Bank;
- 18 • Secured Court approval of his recommended distribution plan for
19 allowed claims and completed an initial distribution on allowed claims
20 against the Entities in the aggregate amount of \$3,100,000.16 in March
21 2018; and
- 22 • Commenced the development of his final distribution and receivership
23 wind-down plans, including initial calculations regarding the amount of
24 his anticipated final distribution on allowed claims, along with the
25 development of an anticipated timeline for making such distribution
26 and petitioning the Court to terminate the present receivership,
27 consistent with the administrative requirements of the Estate and the
28 case administration priorities of the Commission.

1 (See Donell Decl. ¶ 2.)

2 **III. ARGUMENT.**

3 **A. The Application Is Reasonable And Appropriate, And Payment**
4 **Should Be Authorized.**

5 "As a general rule, the expenses and fees of a receivership are a charge upon
6 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).
7 These expenses include the fees and expenses of the Receiver and his professionals.
8 Decisions regarding the timing and amount of an award of fees and costs to the
9 Receiver and his professionals are committed to the sound discretion of the Court.
10 See SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other
11 grounds, 998 F.2d 922 (11th Cir. 1993)).

12 In determining the reasonableness of fees and expenses requested in this
13 context, the Court should consider the time records presented, the quality of the
14 work performed, the complexity of the problems faced, and the benefit of the
15 services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc.,
16 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973); see also Southwestern Media, Inc. v. Rau,
17 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by statute as stated
18 in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP 2011)).

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

24 Moreover, the Receiver and Allen Matkins seek payment, on an interim basis,
25 of only a percentage of the fees and costs incurred, in recognition of the fact that the
26 work on this matter is ongoing. Specifically, the Receiver seeks payment of 90% of
27 discounted fees incurred during the Application Period, in the amount of
28 \$96,459.37, plus 100% of its expenses, totaling \$403.45. Allen Matkins seeks

1 payment of 80% of its discounted fees incurred during the Application Period, or
2 \$257,873.10, plus 100% of its expenses, or \$5,550.98. Payment of the proposed
3 10% and 20% holdbacks, respectively, will be sought at the conclusion of the
4 receivership, and will be subject to Court approval. In general, the Application
5 reflects the Receiver's and Allen Matkins' customary billing rates and the rates
6 charged for comparable services in other matters, less any discounts or reductions
7 specifically identified.² While SL Biggs seeks payment of 100% of its fees, those
8 fees are minimal, and the services of SL Biggs substantially benefitted the Estate.
9 (See Donell Decl. ¶ 4.)

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

15 **B. The Fees And Expenses Submitted For Approval Are Likewise**
16 **Reasonable In the Context Of The Receivership As A Whole.**

17 Courts in the Ninth Circuit use either the "percentage of fund" calculus or
18 apply the "lodestar" method to determine whether a fiduciary fee request is
19 appropriate. See, e.g., Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000); In re
20 Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig., 109 F.3d 602,
21 609 (9th Cir. 1997). The "percentage of fund" determines an appropriate fee as a
22 percentage of funds recovered. Powers, 229 F.3d at 1256. In evaluating the
23 propriety of a fee request with reference to the total funds recovered, the Ninth
24 Circuit has established a benchmark of 25% as presumptively reasonable. See, e.g.,
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26 _____
27 ² As reflected in the Application, the Receiver and Allen Matkins have conferred
28 with the Commission regarding the amounts requested in the Application, as
required by the Appointment Order. All three parties have provided discounts
and write-offs over and above the discounts to which they committed at the
inception of this receivership.

1 Powers, 229 F.3d at 1256-57; see also Petroleum Prods., 109 F.3d at 607 (25%
2 determined to be an appropriate benchmark in common fund matters).

3 An application of the "lodestar" method requires multiplying the number of
4 hours reasonably required for the services performed by the movant's reasonable
5 hourly fee to arrive at the so-called lodestar amount. See, e.g., Blum v. Stenson, 465
6 U.S. 886, 888 (1984). Once the lodestar amount is calculated, a court can then
7 adjust fees up or down depending on context and relevant factors, including the
8 expertise of counsel, complexities of litigation and risks involved, the relation of
9 fees to total recovery (essentially, a "percentage of fund" correction), and other
10 factors. In re San Vicente Medical Partners, Ltd., 962 F.2d 1402, 1410 (9th Cir.
11 1992).

12 Here, as reflected in the Receiver's Sixth Interim Report, the Receiver's total
13 recoveries for the benefit of the Estate and its investors and creditors has exceeded
14 \$8.3 million (or more than \$9.9 million, if one includes the \$1.6 million remitted to
15 Celtic Bank in satisfaction of its claim). (See Dkt. No. 237 at 6:4-7.) As of the date
16 of the Application, and not including the fees and expenses submitted for Court
17 approval in the Application, the Court has approved a total of \$1,061,905.20 in
18 administrative fees and expenses in this matter, for which fees have been paid to the
19 Receiver and Allen Matkins, on an interim basis, at 80% and 90%, respectively,
20 with the remaining holdbacks payable only at the end of the receivership and upon
21 Court approval. (See Dkt. Nos. 145, 146, 163, 187, 221.) The fees and expenses
22 submitted for Court approval in the Application would, if approved, bring the total
23 to approximately \$1.5 million, *inclusive of all holdbacks*. In other words, assuming
24 the Court were to grant the Application and approve the fees and expenses requested
25 therein, the total administrative fees and expenses approved in this matter would be
26 approximately \$1.5 million or about **18%** of all funds recovered for the benefit and
27 administration of the Estate (less than 16%, if one includes the \$1.6 million remitted
28 to Celtic Bank in satisfaction of its claim as part of the Receiver's total recovery).

1 In either event, the total fees and expenses incurred by the Receiver and his
2 professionals in this matter, from the inception of the case through the Application
3 Period, fall *well below* the 25% benchmark established by the Ninth Circuit as
4 presumptively reasonable. An application of the lodestar method to the fees and
5 cost incurred to date likewise supports the Application, particularly given the
6 complexity of the business and financial activities of the Entities, the lack of
7 documentation initially available to the Receiver and the resultant investigation he
8 was required to undertake, resulting in a detailed forensic accounting, and the
9 Receiver's remarkable success in minimizing Entity liabilities and maximizing the
10 value of the Entities' Properties, including, in one instance, via a sale, for \$900,000,
11 of a Property purchased with \$500,000 in funds diverted from investors. The
12 inclusion of a percentage of funds "check" on the lodestar amount only serves to
13 underscore the propriety of the fees and expenses incurred. The Receiver therefore
14 respectfully requests that the Court grant the Application and approve the fees and
15 expenses requested therein.³

16 **C. The Receiver Should Be Authorized To Pay Allowed Fees And**
17 **Expenses From Cash On Hand.**

18 The Receiver presently holds nearly \$3.6 million for the benefit of the
19 Receivership Entities, the bulk of which he expects to distribute to investors and
20 creditors with allowed claims as part of his final distribution in this matter. (See
21 Donell Decl. ¶ 7.) In other words, the Receiver holds funds well in excess of those
22 requested in the Application, and the Receiver respectfully requests the Court's
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25 ³ The Receiver has also met and conferred with the Commission in connection
26 with the Application. After delaying the submission of the Application at the
27 Commission's request to address a handful of outstanding questions, and as
28 reflected in the Application, the Receiver and Allen Matkins agreed to additional
discounts of \$10,000 and more than \$25,000, respectively, and over and above
the across-the-board discounts they are already applying to their work on this
matter, in order to ensure that the fees and expenses submitted for Court approval
in this matter were aligned with the practical realities of the receivership.

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

3 **IV. CONCLUSION.**

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

6 1. Approving the Receiver's fees in the amount of \$107,177.08, and
7 his expenses in the amount of \$403.45;

8 2. Authorizing the Receiver to pay, on an interim basis, 90%
9 (\$96,459.37) of the fees, on an interim basis, plus 100% of expenses incurred
10 (\$403.45), from the funds of the Receivership Entities;

11 3. Approving SL Biggs' fees in the amount of \$1,440.00;

12 4. Authorizing the Receiver to pay 100% of SL Biggs' fees, or
13 \$1,440.00;

14 5. Approving Allen Matkins' fees in the amount of \$322,341.40,
15 and its expenses in the amount of \$5,550.98; and

16 6. Authorizing the Receiver to pay Allen Matkins 80% of its fees
17 incurred (\$257,873.10), on an interim basis, plus 100% of its expenses
18 (\$5,550.98) from the funds of the Receivership Entities.

19

20 Dated: November 20, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
MELISSA K. ZONNE

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By: /s/ Joshua A. del Castillo

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

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PROOF OF SERVICE

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

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

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

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

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **November 20, 2018**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Zachary T. Carlyle**
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- **Eric David Dean**
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- **Melissa Katherine Zonne**
mzonne@allenmatkins.com,mlyons@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **November 20, 2018**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit. Or, I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

Franchise Tax Board (FTB) **Via U.S. Mail**
P.O. Box 2952
Sacramento, CA 95812-2952

Internal Revenue Service **Via U.S. Mail**
880 Front Street
San Diego, CA 92101-8869

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **November 20, 2018** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz