

1 DAVID R. ZARO (BAR NO. 124334)  
2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)  
3 NORMAN M. ASPIS (BAR NO. 313466)  
4 ALLEN MATKINS LECK GAMBLE  
5 MALLORY & NATSIS LLP  
6 865 South Figueroa Street, Suite 2800  
7 Los Angeles, California 90017-2543  
8 Phone: (213) 622-5555  
9 Fax: (213) 620-8816  
10 E-Mail: dzaro@allenmatkins.com  
11 jdelcastillo@allenmatkins.com  
12 naspis@allenmatkins.com

13 Attorneys for Receiver  
14 STEPHEN J. DONELL

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  
RECEIVER'S MOTION FOR ORDER  
APPROVING FINAL DISTRIBUTION  
AMOUNT AND AUTHORIZING  
FINAL DISTRIBUTION

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

Date: May 13, 2019  
Time: 1:30 p.m.  
Ctrm: 10A  
Judge Hon. Stephen V. Wilson

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

28 Stephen J. Donell (the "Receiver"), the Court-appointed permanent receiver  
for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care  
Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the  
"Receivership Entities" or "Entities") hereby moves this Court for an order  
approving the amount of his proposed final distribution on allowed claims, and

1 authorizing him to complete such distribution in accordance with the Court's prior  
2 orders. Specifically, the Receiver presently holds approximately \$3,248,732.92<sup>1</sup> for  
3 the benefit and administration of the Receivership Entities. By this motion, the  
4 Receiver proposes to set aside a total of \$329,058.69 from this total, to cover  
5 accrued and anticipated administrative fees and costs, and to make a final  
6 distribution in the remaining aggregate amount of \$2,919,674.23 to all holders of  
7 allowed claims in the above-entitled receivership, on a *pro rata* basis, in accordance  
8 with the Court's February 8, 2018 order approving the Receiver's recommended  
9 treatment of claims and authorizing distributions thereon (Dkt. No. 222).

10 As part of his final distribution calculation, the Receiver further requests that  
11 the Court approve his retention of approximately \$177,000 in cash turned over to  
12 him from accounts maintained by, or for the benefit of, Relief Defendant Yanrob's  
13 Medical, Inc. ("Yanrob"), which funds are presently included in the \$3,248,732.92  
14 he presently holds for the benefit and administration of the Receivership Entities.  
15 As reflected in prior submissions to this Court, and as acknowledged by Yanrob,  
16 over \$1.2 million in funds derived from Entity investors were diverted for Yanrob's  
17 benefit, in a manner inconsistent with the Entities' investment offering materials and  
18 stated business practices. The Receiver therefore respectfully submits that he should  
19 be entitled to apply the Yanrob funds in his possession to this claim, and to retain  
20 such funds for distribution on allowed claims.

21 **II. RELEVANT FACTUAL BACKGROUND.**

22 **A. The Court's Approval Of The Receiver's Claims Process, Claims**  
23 **Treatment, And Distribution Plan.**

24 On December 22, 2016, this Court entered its Order Granting Receiver  
25 Stephen J. Donell's Motion for Order: (1) Approving Claim Form; (2) Setting  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The majority of these funds are presently being held in an interest-bearing  
account; therefore, the final distribution amount proposed below, if approved by  
the Court, could be higher to include any accrued interest.

1 Claims Bar Date; and (3) Establishing Summary Claims Procedures (Dkt. No. 149),  
2 pursuant to which the Court approved the Receiver's proposed claims process.  
3 Thereafter, and once the Court-established claims bar date lapsed, the Receiver  
4 completed processing all timely claims against the Receivership Entities, and made  
5 his recommendations regarding claims treatment and distribution. On February 8,  
6 2018, the Court entered an Order Granting Stipulation for Order on Receiver's  
7 Omnibus Motion for Order: (1) Approving Receiver's Recommended Treatment of  
8 Claims; and (2) Authorizing Recommended Distribution on Allowed Claims (Dkt.  
9 No. 222), pursuant to which the Court accepted and approved the Receiver's  
10 recommended treatment of claims, and authorized him to undertake *pro rata*  
11 distributions on allowed claims, including an interim distribution in the amount of  
12 \$3.1 million. The Receiver completed his interim distribution and is prepared to  
13 make a final, *pro rata* distribution on allowed claims, and thereafter close the  
14 receivership. (See concurrently filed Declaration of Stephen J. Donell ["Donell  
15 Decl."] ¶ 2.)

16 **B. The Receivership Entities' Unsatisfied Claim Against Yanrob.**

17 The Receiver submitted his initial Forensic Accounting Report to the Court  
18 on April 18, 2016. (See Dkt. No. 53, Ex. 2.) As reflected therein, the Receiver  
19 determined that a "total of \$1,237,350 in disbursements to Yanrob were identified"  
20 originating with the Receivership Entities. (Id.) The Receiver submitted an  
21 Amended Forensic Accounting Report on May 20, 2016, wherein he reaffirmed this  
22 conclusion. (See Dkt. No. 69, Ex. 1.) On September 15, 2016, the Court entered an  
23 order Granting Stipulation for Order Authorizing Abandonment and Sale of Real  
24 Property (Dkt. No. 137), which memorialized and preserved a claim for  
25 reimbursement by the Receivership Entities against Yanrob in the amount of  
26 \$1,237,350. As of the date of this Motion, Yanrob has not reimbursed the  
27 Receivership Entities in connection with this claim, although the Receiver's cash  
28 accounting includes approximately \$177,000 in funds turned over from, or

1 suspended in, Yanrob bank accounts in connection with the Court's preliminary  
2 injunction and order appointing the Receiver (Dkt. No. 18). (Donell Decl. ¶¶ 3, 4  
3 and Ex. A.)

4 **C. Calculation Of Final Distribution Amount.**

5 The Receiver presently holds at least \$3,248,011.36 for the benefit and  
6 administration of the Receivership Entities. (Donell Decl. ¶ 3, Ex. A.) By this  
7 Motion, the Receiver requests that the Court approve a final distribution on allowed  
8 claims, in the aggregate amount of \$2,918,952.04, to be paid *pro rata* as previously  
9 ordered, and calculated as follows:

10 The Receiver and his professionals<sup>2</sup> are owed \$246,432.70, based upon the  
11 so-called hold-backs approved by the Court in connection with their prior fee and  
12 expense applications. These sums, which the Receiver proposes to set aside from  
13 cash on-hand, have already been approved by the Court; however, in accordance  
14 with their employment and engagement agreements, and this Court's orders,  
15 payments on interim fee and expense applications were made at less than 100%,  
16 with the balance deferred to the end of the receivership case.

17 The Receiver and his professionals further propose to set aside a total of  
18 \$42,626.62, to cover their collective, accrued professional fees and expenses for the  
19 period from August 1, 2018 through January 31, 2019, along with a reserve of  
20 \$40,000.00 to cover aggregate, estimated administrative and professional fees and  
21 expenses through the termination of the receivership.

22 This leaves \$2,918,952.04, plus accrued interest, if any, available for final  
23 distribution on allowed claims, provided that the Court approves of the Receiver's  
24 retention of the funds turned over from Yanrob-associated accounts.

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28 <sup>2</sup> The Receiver's professionals include his accountants ("SL Biggs") and his  
counsel of record ("Allen Matkins").

1 The Receiver's proposed final distribution amount calculation may be  
 2 summarized as follows:

	<u>CASH ON-HAND</u>	<u>DEDUCTIONS</u>
	\$3,248,732.92	
First Interim Holdback (Receiver)		(\$25,961.88)
First Interim Holdback (Allen Matkins)		(\$47,924.28)
Second Interim Holdback (Receiver)		(\$7,602.60)
Second Interim Holdback (Allen Matkins)		(\$23,691.96)
Third Interim Holdback (Receiver)		(\$3,155.36)
Third Interim Holdback (Allen Matkins)		(\$16,779.87)
Fourth Interim Holdback (Receiver)		(\$2,255.56)
Fourth Interim Holdback (Allen Matkins)		(\$15,854.94)
Fifth Interim Holdback (Receiver)		(\$4,444.67)
Fifth Interim Holdback (Allen Matkins)		(\$23,574.94)
Sixth Interim Holdback (Receiver)		(\$10,717.71)
Sixth Interim Holdback (Allen Matkins)		(\$64,468.30)
Accrued Fees and Expenses (Receiver)		(\$6,241.50)
Accrued Fees and Expenses (SL Biggs)		(\$3,599.92)
Accrued Fees and Expenses (Allen Matkins)		(\$32,785.20)
Reserve (Receiver)		(\$10,000)
Reserve (SL Biggs)		(\$10,000)
Reserve (Allen Matkins)		(\$20,000)
<b><u>FINAL DISTRIBUTION TOTAL:</u></b>		<b>\$2,918,952.04</b>

19 **III. ARGUMENT.**

20 **A. The Receiver Is Entitled To Retain And Distribute Funds**  
 21 **Turned Over From Or Held In Frozen Yanrob Bank Accounts.**

22 In the absence of controlling authority, and where applicable, district courts  
 23 supervising equity receiverships routinely look to bankruptcy law for guidance.  
 24 SEC v. Am. Capital Invs., 98 F.3d 1133,1140 (9th Cir. 1996); CFTC v. Topworth  
 25 Int'l, 205 F.3d 1107, 1116 (9th Cir. 1999) (Central District local rules, for instance,  
 26 "direct receivers, unless otherwise ordered ... to 'administer the estate as nearly as  
 27 possible in accordance with ... the administration of estates in bankruptcy"); Fleet  
 28

1 Nat'l Bank v. H&D Entm't, 926 F. Supp. 226, 240 n. 56 (D. Mass. 1996) ("[W]hat is  
2 permitted under the Bankruptcy Code, generally is ... permissible under  
3 receivership law").

4 In this context, a party's right to a set-off is subject to the Court's broad  
5 discretion, provided that a federal or state right of set-off exists. See, e.g., In re  
6 Diplomat Elec., Inc., 499 F.2d 342, 346 (5th Cir. 1974); In re Pub. Serv. Co., 884  
7 F.2d 11, 14 (1st Cir. 1989). Moreover, set-offs are "'generally favored[]" and a  
8 presumption in favor of their enforcement exists." In re De Laurentiis Entm't Grp.,  
9 Inc., 963 F.2d 1269, 1277 (9th Cir. 1992) (internal citation omitted). California's  
10 set-off provisions "emanate from the established principle in equity that either party  
11 to a transaction involving mutual debts and credits can strike a balance, holding  
12 himself owing or entitled only to the net difference" between competing claims.  
13 Jess v. Hermann, 26 Cal.3d 131, 142 (1979); see also Kruger v. Wells Fargo Bank,  
14 11 Cal.3d 352, 362 (1974) (same). Notably, "a claim may ... be set off without  
15 regard to whether it is contingent or unliquidated[.]" Newbury Corp. v. Fireman's  
16 Fund Ins. Co., 95 F.3d 1392, 1399 (9th Cir. 1996) (internal citation and quotation  
17 marks omitted).

18 Here, the Receiver has established, in his Forensic Accounting Report and  
19 Amended Forensic Accounting Report, that Yanrob was the recipient of over  
20 \$1 million in funds diverted from investors. Yanrob has expressly recognized this  
21 fact, and stipulated to the Receiver's claim for reimbursement (see, e.g., Dkt.  
22 No. 137.) Yanrob did not file a claim against any funds held by the Receiver.

23 The amount of the Receivership Entities' claim against Yanrob dwarfs the  
24 amount of funds held by the Receiver and turned over from Yanrob bank accounts.  
25 Accordingly, the Receiver should be authorized to apply those funds to the Entities'  
26 claim, and retain those funds for distribution to investors.

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1           **B. The Receiver's Final Distribution Calculation Should Be Approved**  
2           **By The Court.**

3           District Courts supervising federal equity receiverships have broad discretion  
4 to adopt appropriate procedures to administer the assets of and claims asserted  
5 against receivership estates. See, e.g., SEC v. Capital Consultants, LLC, 397 F.3d  
6 733, 738 (9th Cir. 2005); SEC v. Hardy, 803 F.2d 1034 (9th Cir. 1986); SEC v.  
7 Universal Fin., 760 F.2d 1034, 1037 (9th Cir. 1985). The Ninth Circuit has  
8 explained that:

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

17           Capital Consultants, 397 F.3d at 738 (citations omitted); see also CFTC v.  
18 Topworth Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad  
19 deference' to the court's supervisory role, and 'we generally uphold reasonable  
20 procedures instituted by the district court that serve th[e] purpose' of orderly and  
21 efficient administration of the receivership for the benefit of creditors").

22 Accordingly, this Court has discretion to authorize and approve the Receiver's  
23 proposed final distribution, and the Receiver respectfully requests that it do so.

24           Additionally, in the estate administration context, courts are deferential to the  
25 business judgement of bankruptcy trustees, receivers, and similar court-appointed  
26 fiduciaries. See, e.g., Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989)  
27 ("[W]e are deferential to the business management decisions of a bankruptcy  
28 trustee."); Sw. Media, Inc. v. Rau, 708 F.2d 419, 425 (9th Cir. 1983) ("The decision

1 concerning the form of ... [estate administration] ... rested with the business  
2 judgement of the trustee."); In re Thinking Machs. Corp., 182 B.R. 365, 268 (D.  
3 Mass. 1995) ("The application of the business judgment rule ... and the high degree  
4 of deference usually afforded purely economic decisions of trustees, makes court  
5 refusal unlikely.") (rev'd on other grounds, In re Thinking Machs. Corp., 67 F.3d  
6 1021 (1st Cir. 1995)).

7 Here, the Receiver's proposed final distribution amount is consistent with the  
8 aims of the receivership, maximizes distributions on allowed claims (total  
9 distributions will exceed \$6 million), and ensures that all outstanding administrative  
10 fees and expenses are paid, in a manner consistent with the applicable Ninth Circuit  
11 standard.<sup>3</sup> Accordingly, the Receiver submits that his proposed final distribution  
12 amount is appropriate, and should be approved by the Court.

13 **IV. CONCLUSION.**

14 For the foregoing reasons, the Receiver respectfully requests that the Court  
15 enter an order:

- 16 1. Approving the Receiver's proposed final distribution calculation and  
17 final distribution amount;
- 18 2. Authorizing the Receiver to retain and distribute all funds turned over  
19 from, or frozen in, Yanrob bank accounts;
- 20 3. Authorizing the Receiver to set aside from cash on-hand a total of  
21 \$246,432.70 to cover accrued hold-backs of already approved fees;

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24 <sup>3</sup> In evaluating the propriety of a fee request, the Ninth Circuit has established a  
25 benchmark of 25% as presumptively reasonable. See, e.g., Powers v. Eichen,  
26 229 F.3d 1249, 1256-57 (9th Cir. 2000). Here, as reflected in the Receiver's  
27 Extended and Sixth Quarterly Status Report (Dkt. No. 237), the Receiver has  
28 recovered in excess of \$8 million for the benefit and administration of the  
Receivership Entities (more than \$9.9 million, if one includes the \$1.6 million  
previously remitted in satisfaction of the claim of Celtic Bank Corporation).  
Total fees and expenses in this receivership, including those fees and expenses  
already approved by the Court (inclusive of holdbacks), will be less than  
\$1.7 million, or well within the Ninth Circuit's standard.



1 4. Authorizing the Receiver to set aside from cash on-hand a total of  
2 \$42,626.62 to cover accrued administrative and professional fees and expenses, for  
3 the period from August 1, 2018 through January 31, 2019;

4 5. Authorizing the Receiver to set aside a reserve of \$40,000.00 to cover  
5 estimated administrative and professional fees and expenses from February 1, 2019  
6 through the termination of the instant receivership; and

7 6. Authorizing the Receiver to make a final distribution on allowed claims  
8 in the aggregate amount of \$2,918,952.04, plus accrued interest thereon, if any, on a  
9 *pro rata* basis.

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Dated: April 11, 2019

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
NORMAN M. ASPIS

By:           /s/          Joshua A. del Castillo            
JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
STEPHEN J. DONELL

**PROOF OF SERVICE**

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

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

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

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION OF RECEIVER, STEPHEN J. DONNELL, FOR ORDER  
APPROVING FINAL DISTRIBUTION AMOUNT AND AUTHORIZING  
FINAL DISTRIBUTION**

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 **April 11, 2019**, 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**  
carlylez@sec.gov, kasperg@sec.gov, karpeli@sec.gov,  
blomgrene@sec.gov, NesvigN@sec.gov
- **Eric David Dean**  
edean@fyklaw.com, cyoung@fyklaw.com
- **Stephen J. Donell**  
jdelcastillo@allenmatkins.com
- **Mark T. Hiraide**  
mth@msk.com, kjue@phlcorplaw.com, bag@msk.com  
hitabashi@phlcorplaw.com, eganous@phlcorplaw.com
- **Leslie J. Hughes**  
hughesLJ@sec.gov, kasperg@sec.gov, nesvign@sec.gov
- **David J. Van Havermaat**  
vanhavermaatd@sec.gov, larofiling@sec.gov, kassabguir@sec.gov,  
irwinma@sec.gov, longoa@sec.gov
- **Joshua Andrew del Castillo**  
jdelcastillo@allenmatkins.com, mdiaz@allenmatkins.com
- **David R Zaro**  
dzaro@allenmatkins.com, mdiaz@allenmatkins.com

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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 **April 11, 2019**, 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 **April 11, 2019** at Los Angeles, California.

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