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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 * * *

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

14 Defendants,

15 and

16 CSA SERVICE CENTER, LLC
THE FACTORING COMPANY,
17 JUNE FUJINAGA, and
18 THE YUNJU TRUST,

19 Relief Defendants.

Case No.: 2:13-cv-01658-JCM-CWH

**NOTICE OF MOTION AND
OPPORTUNITY TO OBJECT, and
MOTION**

**(1) FOR ENTRY OF A CONSENT
ORDER AUTHORIZING,
APPROVING, AND CONFIRMING
SETTLEMENT AGREEMENT; AND**

**(2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

20 **PLEASE TAKE NOTICE** that Robb Evans & Associates LLC (the “Receiver”),
21 the court-appointed receiver pursuant to the Court’s Order Appointing a Full Equity
22 Receiver to Assume Control Over the Defendants’ Assets and Enforce the Final
23 Judgment (the “Order Appointing Receiver”) entered on May 15, 2015, (ECF No. 226)¹
24

25 _____
26 ¹ All references to “ECF No.” are to the numbers assigned to the documents filed in the relevant
case as they appear on the EM/ECF docket maintained by the clerk of court.

1 will, and hereby does, move the Court for the following relief:

2 1. Entry of an order authorizing, approving, and confirming that certain
3 contingent Settlement Agreement and Mutual Release (the "Settlement Agreement") first
4 dated May 15, 2019, that would, if approved, settle all claims of, by or between certain
5 defendants and relief defendants (the "Fujinaga Parties")² on the one hand, and One Stop
6 Pharmacy, Inc. a/k/a One-Stop Pharmacy Corporation ("One Stop") and Helen Tang
7 ("Ms. Tang", and together with One Stop, the "One Stop Parties") on the other hand. The
8 One Stop Parties and the Fujinaga Parties shall collectively be referred to herein as the
9 "Parties"). A true and correct copy of the Settlement Agreement is attached hereto as
10 **Exhibit "1"**; and

11 2. An order deeming notice of this Motion to be sufficient under LR³ 66-5
12 based on the service of this Motion, Notice of Motion and Opportunity to Object on all
13 parties and on all known non-consumer creditors of the estate, but not on the tens of
14 thousands of potential foreign creditors.

15 For ease of reference, a copy of the proposed order granting this motion and
16 approving the Settlement Agreement is attached hereto as **Exhibit "2"**.

17
18
19
20
21 _____
22 ² The term "Fujinaga Parties" as used in this Motion shall mean and include Edwin Fujinaga,
23 together with the following defendants and relief defendants formerly controlled by Edwin
Fujinaga including, without limitation, MRI International, Inc., Med-Health Pharmaceutical
Products, L.L.C., CSA Service Center, LLC and EBJ&F, LLC.

24 ³ The term "LR" means and refers to the Local Rules of Civil Practice for the United States
25 District Court for the District of Nevada. A copy of the local civil rules may be downloaded
26 from <http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure>, last checked August 7, 2019.

NOTICE OF OPPORTUNITY TO OBJECT

PURSUANT TO LR 66-5, YOU ARE HEREBY GIVEN 14 DAYS' NOTICE OF THIS MOTION. If no opposition, objection, and/or points and authorities in response to the motion is filed and served within 14 days of this Notice, the Court may grant the motion without further notice or hearing. *See* LR 7-2(b). It is the duty of any objecting party to timely (a) file its objection, (b) if desired, to request that its objection be set for a hearing, and (c) properly notice all parties in interest.

NOTICE IS FURTHER GIVEN THAT NO HEARING HAS BEEN SCHEDULED ON THE MOTION, AND IF NO OBJECTION, OPPOSITION, AND/OR POINTS AND AUTHORITIES IN SUPPORT, IS FILED WITHIN 14 DAYS OF THIS NOTICE, THAT THE MOTION MAY BE GRANTED WITHOUT A HEARING.

See LR 78-1.⁴ The failure of an opposing party to timely file points and authorities in response to a motion constitutes a consent to the granting of the motion. *See* LR 7-2(d).⁵

⁴ LR 78-1 provides, in relevant part:

All motions may be considered and decided with or without a hearing. Any party making or opposing a motion who believes oral argument may assist the court and wishes to be heard may request a hearing by inserting the words ORAL ARGUMENT REQUESTED below the title of the document on the first page of the motion or response. Parties must not file separate motions requesting a hearing.

⁵ Should you wish to verify that the Court did not change the standard 14-day deadline to respond to the Motion, you may contact the Receiver's attorney identified at the top of this Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed in the above-captioned case by that certain *Order*
4 *Appointing an Equitable Receiver* entered on February 23, 2015 (ECF No. 194), which
5 commanded and authorized the Receiver to, among other things, take and retain
6 immediate possession, custody, and control of certain commercial properties owned or
7 controlled by Defendant Edwin Fujinaga and others.

8 The duties and responsibilities of the Receiver were enlarged by the Order
9 *Appointing Receiver*, which supersedes the previous order and directs the Receiver to
10 take and retain immediate possession, custody, and control of all assets owned or
11 controlled, directly or indirectly, by any of the defendants in the SEC Receivership
12 Litigation, including EBJ&F, LLC. (ECF No. 226).

13 **II. AUTHORITY TO COMPROMISE AND SETTLE CLAIMS**

14 The Order Appointing Receiver authorizes, empowers, and directs the Receiver to
15 perform certain duties and responsibilities as reasonably appropriate and necessary to
16 comply with and effectuate the goals and purposes of the equitable receivership. *Id.* at ¶
17 4.

18 The Receiver shall obtain prior approval of the Court, upon
19 reasonable notice to the SEC's counsel of record, for any
20 proposed actions or decisions taken in the course of the
21 receivership that will involve or necessitate the substantial
22 commitment, liquidation, or transfer of assets owned or
23 controlled, directly or indirectly, by the Defendants (i.e.,
beyond day-to-day management expenses), or any other
substantial commitment (i.e., beyond day-to-day management
activities) of, affecting, or binding upon the Defendants.

24 *See* Order Appointing Receiver at ¶ 5. As discussed below, the Receiver is
25 recommending the Court approve the Settlement Agreement between the Parties, which
26 approval would constitute a compromise of an estate claim. The leading treatise on

1 receiverships advises receivers to:

2 [U]se his discretion and best business judgment as to matters
3 too small to present to the court. However, it is better practice
4 and the better part of wisdom to go to the court and ask the
5 court's instructions as to compromising large or substantial
6 claims. In addition to going before the court, it is further
7 advisable to notify all parties or creditors who may be vitally
8 interested in such a compromise.

9 3 CLARK ON RECEIVERS § 655 (3d ed. 1992) (citations omitted). The Receiver therefore
10 brings this Motion seeking Court approval of the proposed settlement and has also
11 determined it appropriate to include and serve the Notice of Motion and a Notice of an
12 Opportunity to Object on all Notice Parties.

13 **III. SUMMARY OF RELEVANT FACTS**

14 The following statements summarize relevant records and information available to
15 the estate. These statements are not offered as undisputed facts supportable by evidence
16 currently in the record, but rather, are offered to provide background information
17 concerning the estate's claim. The One Stop Parties contest many of the following
18 statements, and most notably contest the existence of any remaining liability to relief
19 defendant EBJ&F and/or the estate.

20 **A. EBJ&F Loan to One Stop.**

21 One Stop obtained a revolving loan in the amount of \$1.1 million from EBJ&F
22 (the "Loan") in 2008 according to a Revolving Loan and Security Agreement (the "Note
23 and Security Agreement") executed by Helen Tang as president of One Stop and
24 delivered to EBJ&F. A true and correct copy of the Note and Security Agreement is
25 attached as Exhibit 1A to the Declaration of Brick Kane (the "Kane Declaration") (ECF
26 No. 464) at pp. 16—46 of 128, which Declaration is incorporated herein by this
reference.

The Loan was secured by the Note and Security Agreement, in which One Stop
granted EBJ&F a security interest in all of One Stop's tangible and intangible property.

1 *Id.* Ms. Tang did not personally guaranty One Stop's performance of its obligation to
2 repay the Loan to EBJ&F.

3 **B. One Stop's Indebtedness to EBJ&F as of December 31, 2013.**

4 The accounting firm of McGladrey LLP was appointed in this receivership action
5 as an independent party to conduct an accounting of the money, assets, liabilities, real
6 property and personal property of the defendants and relief defendants. (ECF Nos. 57
7 and 68). As authorized by the Court, McGladrey gathered and analyzed the defendants'
8 and relief defendants' available bank statements, financial statements, tax returns, and
9 property records, and summarized its findings in its independent accounting report dated
10 September 9, 2014 (the "McGladrey Report"). Among other things, the McGladrey
11 Report identifies various financial assets and liabilities of the estate, including accounts
12 receivable claims held by the estate.

13 The McGladrey Report was based, at least in part, upon its analysis and review of
14 already-existing financial statements, and balance sheet information for over 30 entities,
15 including EBJ&F, and "[w]hen conducting this analysis, [McGladrey] focused on and
16 considered only the most recent balance sheet for each entity (as provided ... by the
17 Parties)." *See* Excerpt from McGladrey Report, attached as Ex. 10 to the Receiver's
18 Rabobank Motion⁶ ECF No. 464, page 120 of 128, at ¶¶ 33, 34. The McGladrey Report
19 identified an account receivable with a balance as of year-end 2013 in the approximate
20 amount of \$950,000.00, owing by One Stop to relief defendant EBJ&F.

21 The Receiver then obtained an analyzed all relevant bank statements dated after
22 December 31, 2013 and determined that One Stop did not made any payments to EBJ&F
23 at any time after the date of the McGladrey balance sheet referenced above. However,
24

25 ⁶ The term "Rabobank Motion" as used herein shall mean the Motion for Order Authorizing,
26 Directing, and Requiring Rabobank, N.A. And Helen Tang to Immediately Turn over to the
Receiver All Proceeds from the Sale of One Stop Pharmacy. ECF No. 464.

1 the balance and the existence of any indebtedness as of year-end 2013 is ardently
2 contested.

3 The One Stop Parties produced correspondence dated March 5, 2013 that appears
4 to have been sent by a Senior Accountant of Gilmore & Gilmore, CPA, who was the
5 accounting firm employed by the receivership defendants including EBJ&F prior to the
6 Receiver's appointment. In this correspondence, it appears Ms. Tang was advised that
7 the One Stop Loan had been satisfied in full, and that the Loan may even have been
8 overpaid. *See* the correspondence attached as Exhibit A to the Objection to the Rabobank
9 Motion filed by the One Stop Parties (ECF No. 477).

10 The record contains conflicting information, but assuming the Receiver could
11 establish that One Stop remains liable for breach of its obligations under the loan
12 documents, the determination of the amount of the outstanding indebtedness would be a
13 factually intensive question informed by just a few available facts, some of which are
14 directly contradictory.

15 **C. The Sale of the One Stop Collateral, Seller's Proceeds, and the**
16 **Distribution of Seller's Proceeds.**

17 The Receiver determined through its deposition of Ms. Tang and through formal
18 written discovery upon various parties that One Stop ceased operations and sold all of its
19 assets and operations in 2015. The Receiver traced certain wire transfers relating to the
20 One Stop sale which the Receiver used to identify First American as the escrow company
21 who handled the One Stop sale. The Receiver was able to determine that the sale of the
22 One Stop assets and operations closed on February 10, 2015 and that the sale returned net
23 seller's proceeds in the amount of \$547,060.12. Further, the Receiver determined that the
24 One Stop Parties directed First American to wire (a) \$382,942.08 into One Stop's
25 checking account held by Rabobank, N.A., and (b) \$164,118.04 into Helen Tang's
26

1 personal account, which represents a 30/70 split of the net proceeds between Ms. Tang
2 personally and One Stop. The Receiver is in possession of evidence that establishes that
3 Rabobank still held One Stop's 70% share at the time the Receiver demanded that the
4 One Stop account be frozen.

5 With respect to Ms. Tang's receipt of 30% of the seller's proceeds, Ms. Tang
6 testified during her deposition that she believed she was entitled to 30% of the net
7 proceeds pursuant to the following section of the purchase agreement:

8 **4.3 Allocation of the Purchase Price.** The Purchase Price will
9 be allocated for Tax purposes as set forth in this Section 4.3.

10 (a) For the Inventory, an amount equal to the Inventory
11 Amount determined as set forth in Article II.

12 (b) For the covenants not to compete set forth in Section
13 6.7, an amount equal to 20% of the Records Amount, to be
14 allocated among the covenantors at their discretion.

15 (c) For the covenants set forth in the Restrictive
16 Covenant (as defined in Section 5.2), an amount equal to 10%
17 of the Records Amount.

18 *See* Asset Purchase Agreement, Ex. 4 to the Rabobank Motion at § 4.3, (a) – (c). Ms.
19 Tang testified at her deposition that the buyer of the One Stop business negotiated the
20 terms of § 4.3(b) and (c) in exchange for Ms. Tang's personal covenants to refrain from
21 opening a new pharmacy in the vicinity and to refrain from attempting to retain or
22 otherwise benefit from her customer base.

23 Despite Ms. Tang's rationale, the Receiver takes some exception to Ms. Tang's
24 self-settled approach to the seller's proceeds. Nevertheless, as with the remaining issues,
25 the facts do not support either parties' arguments unilaterally, and the ultimate
26 determination of the dispute would likely be a factually intensive inquiry.

1 The estate's best claim, and perhaps its best argument in support of actual
2 damages, may be founded on the 70% share allocated to One Stop in the approximate
3 amount of \$383,000. The Settlement Agreement will, if approved, provide a recovery to
4 the estate without contested proceedings in the amount of not less than \$337,000. The
5 Receiver submits that the benefit to the estate in realizing \$337,000 is significant in light
6 of its claim, is reasonable, and would be a favorable result for the estate in light of the
7 circumstances, particularly as One Stop is no longer a going concern, and as Ms. Tang is
8 not a personal guarantor of the Loan. Accordingly, the estate's claim against Ms. Tang
9 would require a showing of some sort of malfeasance as a corporate officer of an
10 insolvent corporation.

11 **IV. The Proposed Settlement Serves the Best Interests of the Estate and the**
12 **Receiver Therefore Recommends it be Approved.**

13 The Ninth Circuit found that "[a] district court's power to supervise an equity
14 receivership and to determine the appropriate action to be taken in the administration of
15 the receivership is extremely broad" and is subject to review under an abuse of discretion
16 standard. *SEC v. Hardy*, 803 F. 2d 1034, 1037 (9th Cir. 1986). The right of a receiver to
17 settle claims and compromise actions with the approval and sanction of the court is well
18 recognized. *Fugazy Travel Bureau, Inc. v. State*, 188 So. 2d 842, 844 (Fla Dist. Ct. App.
19 1966) (citing *Bancroft v. Allen*, 138 Fla. 841, 846 (Fla. 1939). "The only justification for
20 the compromise of claims is that it is done for the best interests of the receivership and
21 the estate under the control and possession of the court." CLARK ON RECEIVERS, *supra* at
22 § 656.

23 Fed. R. Civ. Proc. 66 provides that "the practice in administering an estate by a
24 receiver or similar court-appointed officer must accord with the historical practice in
25 federal courts or with a local rule."
26

1 There are 4 elements used in a bankruptcy settlement context that the Receiver
2 submits might further inform the Court’s evaluation of this proposed compromise.

3 (a) [t]he probability of success in the litigation;

4 (b) the difficulties, if any, to be encountered in the matter of collection;

5 (c) the complexity of the litigation, as well as the expense, inconvenience
6 and delay necessarily attending it; [and]

7 (d) the paramount interest of creditors, giving proper deference to their
8 reasonable views [regarding the proposed compromise].

9 *United States v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010) (quoting *In re A & C*
10 *Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986)). “The purpose of a compromise agreement
11 is to allow the trustee and the creditors to avoid the expenses and burdens associated with
12 litigating sharply contested and dubious claims.” *Id.* In general, compromises are favored
13 in bankruptcy actions. *In re Stein*, 236 B.R. 34, 37 (D. Or. 1999). Accordingly, the Court
14 generally gives deference to a trustee’s business judgment, *In re Pac. Gas & Elec. Co.*,
15 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004) and will approve a compromise that falls
16 within the “range of reasonableness.”

17 The Second Circuit has defined “range of reasonableness” as “a range [that]
18 recognizes the uncertainties of law and fact in any particular case and the concomitant
19 risks and costs necessarily inherent in taking any litigation to completion.” *Newman v.*
20 *Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Approval of a compromise will not be disturbed
21 on appeal where the compromise falls within the range of reasonableness. *See id.*
22 Although the Court may not simply “rubber-stamp” the decision to enter into a
23 settlement, it need not conduct an exhaustive investigation, hold a mini-trial on the merits
24 of the claims sought to be compromised, or require that the settlement be the best that
25 could possibly be achieved. *In re Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir.
26

1 1982). Rather, the Court “need only find that the settlement was negotiated in good faith
2 and is reasonable, fair and equitable.” *Pac. Gas*, 304 B.R. at 417.

3 **A. The probability of success in litigation.**

4 As noted above, the documentation and information in support of the estate’s
5 claim is largely founded upon the McGladrey Report. The Receiver has located and
6 analyzed the loan documents and has concluded these documents provide *prima facie*
7 evidence of the existence, initial balance, and terms of the One Stop Loan. The
8 McGladrey Report provides *prima facie* evidence of the balance of the One Stop Loan as
9 of December 2013.

10 However, the McGladrey Report in this respect may be largely based on the
11 records of, and financial statements prepared by, the accounting firm of Gilmore &
12 Gilmore, and the correspondence Ms. Tang appears to have received from this same
13 accounting firm contradicts the information contained in the McGladrey Report on this
14 point.

15 Moreover, as this Court may recall, the defendants in this case did not keep
16 comprehensive, complete, or well-organized records. The estate does not have possession
17 of tax records disclosing deductions for, or interest income from, the Loan to sufficiently
18 deduce any indebtedness that may be outstanding. Similarly, the Receiver has not been
19 able to locate or extrapolate from records the Loan history, payment records,
20 comprehensive disbursement records, or other Loan details to substantially support the
21 account receivable line item contained in the 2013 year-end balance sheet. The success of
22 litigation on these facts cannot be predicted with any certainty.

23 **B. The difficulties, if any, to be encountered in the matter of collection.**

24 One Stop Pharmacy was dissolved over 4 years ago. Accordingly, should the
25 Receiver be able to secure a judgment in EBJ&F’s favor, the funds likely to be available
26

1 for recovery would likely be limited to the balance of the Rabobank account. An
2 additional source of recovery would be from Ms. Tang personally, but as noted above,
3 Ms. Tang did not personally guaranty the Loan. Even assuming her personal liability
4 could be established, a judgment in favor of the estate would still face two significant
5 bars to collection. First, the estate would have to overcome Ms. Tang's arguments that
6 she was not entitled to retain 30% of the net proceeds as consideration for her personal
7 covenants not to compete with the One Stop buyer.

8 Second, and although from all accounts Ms. Tang is a successful pharmacist who
9 is capable of, and who may still be, generating sufficient income to make collection of
10 any judgment in favor of the estate a possibility, her primary residence is in California,
11 and she has no known assets in Nevada. As this is a Nevada receivership action, some
12 difficulty would result merely as a result of jurisdictional issues. Finally, if a judgment
13 were obtained against Ms. Tang personally, such a personal judgment could be subject to
14 discharge in bankruptcy.

15 **C. The complexity of the litigation, as well as the expense, inconvenience**
16 **and delay necessarily attending it.**

17 The Receiver views the legal complexity of litigating this dispute to be
18 approximately average. The litigation would involve, at its heart, a breach of a
19 commercial loan against One Stop, and a breach of Ms. Tang's obligations as an officer
20 of an insolvent company to satisfy its debts prior to receiving its assets.

21 Nevertheless, while the legal issues may be of average complexity, the anticipated
22 factual complexity of litigation could be unreasonably arduous considering the best
23 anticipated return of litigation, as compared to the proposed compromise, to the estate.
24 There is currently scant evidence that establishes with conviction the account receivable
25 stated in the Gilmore & Gilmore financial statements for EBJ&F, and there is also
26

1 conflicting correspondence from the same accounting firm. The estate does not have
2 comprehensive records supporting the existence or amount of any outstanding
3 indebtedness under the EBJ&F Loan, and therefore might be left to rely primarily upon
4 forensic accounting and testimony of third parties.

5 EBJ&F's business dealings with One Stop Pharmacy are centered in medical
6 accounts receivables, which as this court is aware, are typically small margin but high-
7 volume transactions. The costs that would be incurred to establish the balance of the
8 revolving loan balance by forensic accounting would likely be significant and could be
9 relatively exorbitant in comparison to the amount in controversy. These forensic
10 accounting costs would add to the legal fees, costs, and expenses attendant to any trial.
11 The factually intensive questions relating to the estate's claim would likely create a high
12 barrier to summary resolution, and the Receiver estimates it will be more likely than
13 average in this instance that a trial would be necessary to resolve this dispute unless a
14 compromise is reached.

15 The Receiver expects the expense, inconvenience, and delay to the resolution of
16 this estate to be a significant factor weighing in favor of approving the proposed
17 compromise.

18 **D. The paramount interest of creditors, giving proper deference to their**
19 **reasonable views [regarding the proposed compromise].**

20 As discussed in more detail below, the non-consumer creditors of the estate shall
21 be given adequate notice of this motion and notice of their opportunity to object prior to
22 the Court's consideration and possible approval of the Receiver's proposed compromise.
23 Should the creditor body have any negative responses or objections to this Motion, these
24 responses or objections will be apparent to the Court prior to entry of any order
25 approving this Motion. The Receiver is not aware of any creditor's objection to the
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1 proposed Settlement Agreement, but should one be raised, the Receiver will reply as
2 appropriate.

3 In addition, the SEC has advised the Receiver that the SEC has no objection to the
4 proposed Settlement Agreement.

5 **V. The Terms of the Proposed Settlement Are Favorable to the Estate.**

6 Section 4 of the attached proposed Settlement Agreement sets forth the
7 consideration to be exchanged to settle the estate's claim against the One Stop Parties and
8 the mutual reciprocal release of all claims by and between the Parties.

9 The proposed Settlement Agreement provides that, if approved, the Parties would
10 work together to ensure Rabobank releases all funds remaining in the Rabobank Account
11 to the Receiver. The Receiver in turn, would retain not less than \$337,183.99 for the
12 estate's general settlement fund, and in general terms, would then distribute the
13 remaining Rabobank Account balance, up to but not to exceed \$100,000 to the One Stop
14 Parties, to defray or satisfy any and all tax liabilities that may remain as a result of One
15 Stop's operations.

16 **VI. Notice of This Motion Is Sufficient Under the Circumstances and Should Be**
17 **Approved.**

18 LR 66-5 provides for service of notices of hearings on various motions by a
19 receiver concerning the administration of an estate. No hearing has been set on this
20 Motion and the provisions of LR 66-5 do not specifically apply.

21 Nevertheless, the Receiver will serve notice of filing of the Motion on the parties,
22 the affected lienholders, and on all known non-consumer creditors of the estate and on
23 known taxing authorities with a potential claim in the receivership estate ("Notice
24 Parties"), to provide them notice and an opportunity to be heard concerning the Motion.

1 There is ample authority for approval of the scope and method of notice. This
2 Court, as a court of equity supervising the receivership estate, may make appropriate
3 administrative orders governing the receivership, including limitations on and changes in
4 notice and other procedures. *See* Fed. R. Civ. P. 5(a) and (c) (authorizing the court to
5 modify service procedures when numerous defendants are involved in litigation). This
6 notice is consistent with notice previously approved by the Court in this case.

7 In this case, there are believed to be a large number of potential consumer
8 creditors who may have claims against the receivership defendants arising out of the
9 business operations of the receivership defendants prior to the Receiver's appointment,
10 although the precise number, identity and location of such consumer creditors have not
11 been determined by the Receiver. The Receiver has had discussions with counsel
12 representing many of the foreign investors and has been advised that the number of
13 consumer creditors is likely in the thousands. It is not realistically possible or beneficial
14 to the estate and its creditors for the Receiver to attempt to identify and serve the
15 potential consumer creditors with notice of this and other similar motions, and the
16 expense and burden on the estate of attempting to effectuate such service would drain the
17 estate's resources and cause undue administrative expense.

18 To the extent that LR 66-5 applies to this Motion, the Receiver seeks an order that
19 notice of this Motion is sufficient if notice of the filing of the Motion is given by serving
20 copies of all motion papers on the parties to the action and the affected lienholders and by
21 serving copies of the notice of filing of the motion on the Notice Parties identified above.
22 The Receiver submits that such service provides sufficient notice and an opportunity for
23 hearing to the interested parties and should be approved as adequate.

24 **VII. Conclusion**

1 A contested resolution of the estate's claims would carry significant risk and
2 would almost certainly require and consume significant estate resources and time. Given
3 the amount in controversy, the Receiver's analysis of the likely costs, risks, and outcome
4 of litigation to resolve this contested matter, and the estimated best likely net return to the
5 estate from litigation, the resolution negotiated by the Receiver falls within the range of
6 reasonableness and its approval would be in the best interests of the estate and its
7 creditors.

8 For the foregoing reasons, the Receiver therefore moves for entry of an order
9 granting this motion in its entirety in substantially the same form as the proposed order
10 attached hereto, which shall be separately lodged with the court.

11 Dated August 19, 2019.

12 LYNCH LAW PRACTICE, PLLC

13 /s/ Michael F. Lynch
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17 Las Vegas, Nevada 89169
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19 702.543.3279 (fax)
20 Michael@LynchLawPractice.com

21 Attorney for Receiver Robb Evans
22 & Associates LLC
23
24
25
26

Exhibit 1

Exhibit 1

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is dated May 15, 2019, and shall be effective only upon Court Approval (the "Effective Date"), and is entered into by and among (a) One Stop Pharmacy, Inc. ("One Stop") and Helen Tang ("Ms. Tang", and together with One Stop, the "One Stop Parties") on the one hand, and (b) entities formerly controlled by Edwin Fujinaga including, without limitation, MRI International, Inc., Med-Health Pharmaceutical Products, L.L.C., CSA Service Center, LLC and EBJ&F, LLC (the "Fujinaga Entities") on the other hand. The One Stop Parties and the Fujinaga Entities are collectively referred to here as the "Parties".

RECITALS

WHEREAS, Robb Evans & Associates LLC was appointed receiver (the "Receiver") in that certain case styled Securities and Exchange Commission vs. Edwin Yoshihiro Fujinaga and MRI International, Inc., pending in the United States District Court in and for the District of Nevada as case no. 2:13-cv-01658-JCM- CWH (the "SEC Receivership Litigation") by that certain Order Appointing an Equitable Receiver entered on February 23, 2015 in the SEC Receivership Litigation. (ECF No. 194), which commanded and authorized the Receiver to, among other things, take and retain immediate possession, custody, and control of certain commercial properties owned or controlled by Edwin Fujinaga and others.

WHEREAS, the duties and responsibilities of the Receiver were enlarged by that certain Order Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and Enforce the Final Judgment entered on May 15, 2015 (the "Order Appointing Receiver") in the SEC Receivership Litigation. (ECF No. 226). The Order Appointing Receiver supersedes the previous order at ECF No. 194, and directs the Receiver to "[l]evy on assets, file collection actions, file fraudulent transfer actions, and take all reasonable measures to enforce the Final Judgment as though the Receiver were the judgment creditor in this action" and to "[t]ake and retain immediate possession, custody, and control of all assets owned or controlled, directly or indirectly, by any of the Defendants.¹ The term "assets" as it is used in this Order includes, but is not limited to, real property, personal property, money and funds, and the books and records pertaining to the assets." Order Appointing Receiver at ¶ 4(a) and (b).

WHEREAS, certain claims, counterclaims, and disputes have arisen between the Parties.

WHEREAS, One Stop ceased doing business in early 2015, upon its sale to a third party. A portion of the proceeds from that sale were deposited into a RaboBank Account held under the name of One Stop, and the remaining portion was deposited into a personal bank account held by Ms. Tang. The Receiver alleges that One Stop was and is heavily indebted to EBJ&F in the approximate amount of \$950,000, and therefore no funds should have been paid to investors or owners of One Stop, but that all of One Stop's assets, including the net seller's proceeds of the sale of approximately \$550,000, and all other funds available to One Stop, including all funds in

¹ EBJ&F, LLC is a Relief Defendant in the Receivership Case and was owned and controlled by Defendant Edwin Fujinaga.

the RaboBank Account rightfully belong to the estate, up to the amount of the debt owing by the One Stop Parties to EBJ&F. The One Stop Parties claim that no proceeds or any other sums should be paid to EBJ&F because their debt to EBJ&F was previously satisfied in full.

WHEREAS, to avoid the burden, uncertainty and expense of litigating claims relating to the Fujinaga Entities, their officers, managers, principals, and/or agents, and the One Stop Parties, their officers, managers, principals, and/or agents, regardless of whether such claim has been alleged or articulated, the Parties desire to execute this Agreement memorializing in full the Parties' settlement, which, among other things, provides for the mutual settlement and release of each other from any and all claims, actions, causes of action, suits, debts, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, contingent or fixed, liquidated or unliquidated of any and every nature whatsoever existing at any time on or before the Effective Date (collectively, the "Claims"); and

WHEREAS, the Receiver is not acting in its individual capacity, but solely in its capacity as the Receiver and as though the Receiver has exclusive and sole authority to act on behalf of the Fujinaga Entities, in accord with and subject to the limitations set forth in the Order Appointing Receiver;

NOW, THEREFORE, in consideration of the foregoing recitals, the promises, rights and benefits set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties stipulate and agree, subject to the approval of the receivership Court, as follows:

1. Recitals. The foregoing recitals are hereby made a part of this Agreement.
2. Mutual Release of Claims. Subject to SEC and Court approval of this Agreement, to which the Parties hereby agree to Stipulate to in the Receivership case, and except for and contingent upon the duties set forth in Section 4 below, the Parties, for themselves, as well as their respective owners, parents, subsidiaries, affiliate, agents, employees, shareholders, officers, directors, managers, members, representatives, and beneficiaries fully release and forever discharge one another and their respective owners, parents, subsidiaries, affiliate, agents, employees, shareholders, officers, directors, managers, members, representatives, and beneficiaries, if any, of and from:
 - 2.1. any and all claims, known or unknown, asserted or unasserted, of whatever nature, now existing or hereafter arising, relating in any way to the Claims, its subject matter; and

2.2. any and all damages alleged previously sustained or sustained in the future by any reason relating in any way to the Claims or the continued effects thereof; and

2.3. any and all claims arising directly or indirectly from any federal, state or local law relating in any way to the Claims, its subject matter, or any matters that were or that could have been asserted by or against any of the Parties.

3. Matters Not Released. Notwithstanding anything to the contrary herein, the foregoing mutual release of claims shall not include any liability or obligation created by this Agreement. The Parties' rights to enforce this Agreement shall survive the consummation of this Agreement.

4. Settlement Consideration. The mutual releases stated in paragraph 2, above, entitled "Mutual Release of Claims," are made and given for and in consideration of:

4.1. Forgiveness of Loan Obligation. The Fujinaga Entities, by and through the Receiver, shall forgive the One Stop Parties from any and all loan or other obligations, including any personal guaranty obligations, that were or are owing to any of the Fujinaga Entities.

4.2. RaboBank Account. The term "RaboBank Account" as used herein shall mean and refer to the Platinum Bus Rewards Checking account in the name of One Stop, identified as account no. [REDACTED] 5491.

4.3. The Funds in the RaboBank Account. As of March 29, 2019, the RaboBank Account held funds in the amount of \$437,183.99, as evidenced by the RaboBank Account statement for the period ending on March 29, 2019 attached hereto as Exhibit "A". The One Stop Parties have expressed concerns that One Stop may be liable for unpaid taxes. Thus, the Parties have agreed that the One Stop Parties will receive up to \$100,000 of the amount held in the RaboBank Account except as otherwise provided in paragraph 4.5.

4.4. Subject to court-approval of this Agreement, RaboBank is directed and authorized to release the entire balance of the RaboBank Account to the Receiver, which balance the Parties have reason to believe is not less than \$437,183.99, to be distributed by the Receiver in accord with the terms of this Agreement without further order of this court.

4.5. Within thirty-five (35) days after the Court enters its order approving, authorizing, and confirming this Agreement or fourteen (14) days after RaboBank releases the entire balance of the RaboBank Account, whichever is later, the Receiver shall distribute the RaboBank Account balance as follows: (a) \$100,000 to One Stop c/o Helen Tang, and (b) \$337,183.99, to the Receiver for deposit into the estate's general settlement fund or as otherwise ordered by the Receivership Court. If any funds in the RaboBank Account were seized prior to the Receiver's control of the RaboBank Account, that amount shall be subtracted from the \$100,000 that would otherwise be distributed to One Stop c/o Helen Tang. The Parties stipulate and agree that this Agreement is contingent upon the Receiver's receipt of not less than \$337,183.99. The Parties (i) shall acknowledge and facilitate the release of all funds held in the RaboBank Account to the Receiver, and (ii)

shall fully cooperate and facilitate this transaction such that no unnecessary or unneeded efforts are required by another Party.

5. Required Approvals. This Agreement shall be contingent upon SEC and Court approval in the SEC Receivership Action. The Parties hereby agree to jointly seek court authority, approval, and confirmation of this Agreement, whether styled a joint motion or application, or a stipulation or a stipulated order.
6. No Liability. By entering into this Agreement, the Parties do not admit:
 - 6.1. any liability for any claim, cause of action, or demand; or
 - 6.2. any wrongdoing or fault; or
 - 6.3. any violation of any law, precedent, rule, regulation, or statute. Further, nothing contained in this Agreement may be construed as an admission against the interest of any of the Parties.
7. Attorneys' Fees. Each of the Parties to this Agreement shall bear his/its own attorneys' fees and costs incurred in connection with or relating to the Claims and the settlement thereof, except as provided in ¶ 14 hereinbelow.
8. Acknowledgements. The Parties understand and expressly agree and warrant:
 - 8.1. The releases contained herein extend and apply to, and cover and include all unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and liability, if any, arising from or related to the subject matter of the Claims.
 - 8.2. No promise or inducement has been offered except as set forth in this Agreement.
 - 8.3. This settlement is made in good faith and is equitable and fair.
 - 8.4. Each of the Parties is legally competent to execute this Agreement and to accept full responsibility therefor.
 - 8.5. This Agreement and the releases set forth in it have been carefully read in their entirety by each of the Parties, who has had the benefit and advice of counsel of their choosing, and that this Agreement and the releases set forth in it, once approved by the receivership Court, are in full, final and complete compromise, settlement, release, accord and satisfaction, and discharge of all Claims.
 - 8.6. In entering into this Agreement and the settlement and releases that are encompassed herein, each of the Parties is acting freely and voluntarily and without influence, compulsion, or duress of any kind from any source, including, but not limited to, any other party or Parties, his/its/their attorneys, representatives, or anyone acting or purporting to act on behalf of any of the Parties.
 - 8.7. The Parties have the authority and capacity to prosecute and/or defend the Claims made and they further have the authority to stipulate to the release and discharge with prejudice of the Claims.

8.8. None of the Parties has assigned to any other person or party all or any portion of any claim or counterclaim whatsoever that they may now or in the future have against any party arising out of the facts involved in the Claims.

8.9. Each of the Parties has participated in the preparation of this Agreement and that in construing or interpreting this Agreement, no provision of the Agreement shall be construed or interpreted against the drafting party, or any other party to the Agreement.

9. Integration. This Agreement represents the full and complete integration of the agreement between/among the Parties and is the complete expression thereof. All other agreements, negotiations, and representations between/among the Parties pertaining to the subject matter of this Agreement, and to the extent not expressly set forth herein, are void and of no force or effect whatsoever. This Agreement is subject to approval by the Receivership court, and except for the lawful sue sponte order of the Court, no terms may be amended or modified except in writing and signed by each of the Parties.

10. Governing Law. The Parties further agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, and that with respect to any dispute, controversy or claim arising out of, relating to, or in connection with this agreement, or the breach, termination, or validity thereof (“Dispute”), that any and all such Disputes shall be subject to the exclusive jurisdiction and venue of the Receivership Court, which case is styled *Securities and Exchange Commission vs. Edwin Yoshihiro Fujinaga et al.*, pending in the United States District Court for the District of Nevada, Case No.: 2:13-cv-01658-JCM-CWH.

11. Counterparts. This Agreement may be executed in any number of counterparts confirmed by facsimile signatures transmitted by telephone, each of which shall be deemed a duplicate original.

12. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13. Successors, Affiliates, and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

14. Prevailing Party. Should any party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party his/its reasonable attorneys’ fees and costs in addition to any other appropriate relief.

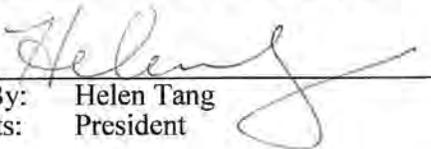
IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement on the date set forth below.

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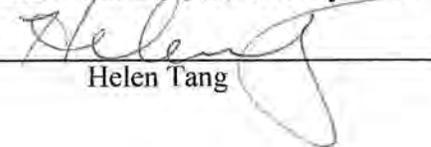
<Signature pages to the Settlement Agreement and Mutual Release>

DATED:

ONE STOP PHARMACY, INC.


By: Helen Tang
Its: President

HELEN TANG, individually


Helen Tang

DATED:

EBJ&F, LLC

By: ROBB EVANS & ASSOCIATES,
LLC, solely in its capacity as court-
appointed receiver for EBJ&F, LLC.

By: Brick Kane, the Receiver's
President and Chief Operating Officer

CSA SERVICE CENTER, LLC

By: ROBB EVANS & ASSOCIATES,
LLC, solely in its capacity as court-
appointed receiver for CSA Service Center,
LLC

By: Brick Kane, the Receiver's
President and Chief Operating Officer

MRI INTERNATIONAL, INC.

By: ROBB EVANS & ASSOCIATES,
LLC, solely in its capacity as court-
appointed receiver for MRI International,
Inc.

By: Brick Kane, the Receiver's
President and Chief Operating Officer

**MED-HEALTH PHARMACEUTICAL
PRODUCTS, L.L.C.**

By: ROBB EVANS & ASSOCIATES,
LLC, solely in its capacity as court-appointed
receiver for Med-Health Pharmaceutical
Products, L.L.C.

By: Brick Kane, the Receiver's
President and Chief Operating Officer

<Signature pages to the Settlement Agreement and Mutual Release>

DATED:

DATED: 5/29/19

ONE STOP PHARMACY, INC.

EBJ&F, LLC

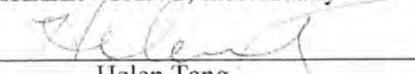

By: Helen Tang
Its: President

By: ROBB EVANS & ASSOCIATES, LLC, solely in its capacity as court-appointed receiver for EBJ&F, LLC.


By: Brick Kane, the Receiver's President and Chief Operating Officer

HELEN TANG, individually

CSA SERVICE CENTER, LLC


Helen Tang

By: ROBB EVANS & ASSOCIATES, LLC, solely in its capacity as court-appointed receiver for CSA Service Center, LLC


By: Brick Kane, the Receiver's President and Chief Operating Officer

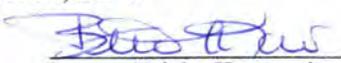
MRI INTERNATIONAL, INC.

By: ROBB EVANS & ASSOCIATES, LLC, solely in its capacity as court-appointed receiver for MRI International, Inc.


By: Brick Kane, the Receiver's President and Chief Operating Officer

MED-HEALTH PHARMACEUTICAL PRODUCTS, L.L.C.

By: ROBB EVANS & ASSOCIATES, LLC, solely in its capacity as court-appointed receiver for Med-Health Pharmaceutical Products, L.L.C.


By: Brick Kane, the Receiver's President and Chief Operating Officer