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

9 SECURITIES AND EXCHANGE COMMISSION,

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

10 Plaintiff,

vs.

11 EDWIN YOSHIHIRO FUJINAGA and
12 MRI INTERNATIONAL, INC.,

Defendants,

13 and

14 CSA SERVICE CENTER, LLC
15 THE FACTORING COMPANY,
16 JUNE FUJINAGA, and
THE YUNJU TRUST,

Relief Defendants.

**NOTICE OF MOTION AND MOTION
FOR ORDER (1) AUTHORIZING
THE RECEIVER TO LIST AND
MARKET FOR SALE THE REAL
PROPERTY LOCATED AT 150 E
HARMON; AND, (2) GRANTING
RELIEF FROM LOCAL RULE 66-5
PERTAINING TO NOTICE TO
CREDITORS**

17 **PLEASE TAKE NOTICE** that Robb Evans & Associates LLC, the court-appointed
18 receiver ("Receiver") pursuant to the Court's Order Appointing a Full Equity Receiver to Assume
19 Control Over the Defendants' Assets and Enforce the Final Judgment (the "Order Appointing
20 Receiver") entered on May 15, 2015 (Dkt. 226) will and hereby does move the Court for the
21 following relief:

22 1. An order authorizing the Receiver to engage a broker to list and market for sale,
23 the real property located at 150 E. Harmon Street, Las Vegas, Nevada 89109 (the "Harmon
24 Property") and identified by the Clark County Assessor as parcel no. 162-21-202-004. The
25 Receiver further requests authority to enter into a purchase and sale agreement of the Harmon
26 Property, providing such purchase and sale agreement is contingent upon subsequent Court
27 approval. In short, if this Motion is granted and the listing and marketing efforts result in an
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1 offer to purchase the Harmon Property that the Receiver believes is advantageous to the Estate,
2 the Receiver would enter into a contingent purchase and sale agreement and then seek authority
3 from this Court to consummate the sale by subsequent motion; and

4 2. An order deeming notice of this Motion to the parties registered and receiving
5 notifications via the Court's CM/ECF system be sufficient under Local Civil Rule 66-5, on the
6 basis that the relief requested by this Motion is limited to listing and marketing the Harmon
7 Property for sale, and does not seek authority or approval to sell the Harmon Property at this
8 time.

9 This Motion is made pursuant to 28 U.S.C. §§ 2001 and 2002 and Local Rules 66-5 and
10 66-10 and other applicable law and is based upon this Notice of Motion and Motion, the
11 accompanying Memorandum of Points and Authorities, the Declaration of M. Val Miller (the
12 "Miller Declaration"), and upon all other pleadings and documentary evidence as may be
13 presented to the Court by the Receiver in support of this Motion.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION AND SUMMARY OF RELEVANT FACTS**

16 Robb Evans & Associates LLC was appointed receiver ("Receiver") in the above-
17 captioned case by that certain Order Appointing an Equitable Receiver (the "First Order
18 Appointing Receiver") entered on February 23, 2015 (Dkt. 194), which commanded and
19 authorized the Receiver to, among other things, take and retain immediate possession, custody,
20 and control of certain commercial properties owned or controlled by Defendant Edwin Fujinaga
21 and others, including the Harmon Property. The duties and responsibilities of the Receiver were
22 enlarged by that certain Order Appointing a Full Equitable Receiver to Assume Control over the
23 Defendants' Assets and Enforce the Final Judgment entered on May 15, 2015 (the "Order
24 Appointing Receiver") (Dkt. 226). The Order Appointing Receiver supersedes the previous
25 order, and directs the Receiver to take and retain immediate possession, custody, and control of
26 all assets owned or controlled, directly or indirectly, by any of the Defendants in the SEC
27 Receivership Litigation, including HMC Service Center, LLC, the owner of the Harmon
28 Property. *Id.*

1 With respect to the Harmon Property, which currently has one tenant, the Court has
2 ordered:

3 Insofar as there is a tenant occupying a portion of the property
4 located at 150 East Harmon Avenue, Las Vegas, Nevada, the
5 Receiver shall take over the role of landlord, collect all rents and
issues paid by the tenant, and take over the occupancy of the
property upon the expiration or termination of the lease.

6 See Order Appointing Receiver at ¶ 6. As stated below, however, the status of the Harmon
7 Property as an income-producing property will soon change.

8 **II. THE RECEIVER REQUESTS THE COURT AUTHORIZE THE RECEIVER TO
9 HIRE A BROKER TO LIST AND MARKET THE HARMON PROPERTY FOR
10 SALE BECAUSE THE HARMON PROPERTY TENANCY WILL TERMINATE
NOT LATER THAN DECEMBER 31, 2016.**

11 As the Ninth Circuit noted in SEC v. Hardy, 803 F. 2d 1034, 1037 (9th Cir. 1986): "A
12 district court's power to supervise an equity receivership and to determine the appropriate action
13 to be taken in the administration of the receivership is extremely broad" and subject to review
14 under an abuse of discretion standard.

15 The Harmon Property consists of the former Harmon Medical Center, which is a two-
16 story structure containing a total area of approximately 25,741 square feet built upon a 1.62-acre
17 site, title to which is held in the name of HMC Service Center, LLC. See Miller Declaration at ¶
18 5. The Harmon Property currently has a single tenant, and accordingly, the Receiver has been
19 acting as landlord pursuant to the Order Appointing Receiver at ¶ 6. The single tenant recently
20 served notice of its intent to terminate its tenancy at the Harmon Property when its lease expires
21 on December 31, 2016. See id. at ¶ 7.

22 The Receiver has no plans to start or restart any Estate business at the Harmon Property
23 after the sole tenant vacates the premises. See id. at ¶ 8. It therefore appears that after December
24 31, 2016, the Harmon Property will cease to generate any income, that there would be no on-
25 going business at the Harmon Property, and that the Harmon Property would be subject to
26 increased risk of damage, vandalism and theft. See id. The Receiver has determined in its
27 business judgment that the interests of the Estate and its creditors would best be served by
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1 engaging a broker to list and market Harmon Property for sale, and by this Motion, the Receiver
2 therefore requests Court authority to do so. See id. at ¶ 9.

3 **III. THE RECEIVER WOULD RETAIN 30% OF THE NET PROCEEDS OF ANY**
4 **SALE OF THE HARMON PROPERTY SUBJECT TO RESOLUTION OF**
5 **CERTAIN POTENTIAL MINORITY MEMBERS' CLAIMS.**

6 Edwin Fujinaga previously opposed any sale of the Harmon Property based upon his
7 contention that certain third parties own a portion of HMC Service Center, LLC, which entity is
8 the owner of the Harmon Property. Specifically, Mr. Fujinaga contends that Junzo Suzuki¹ and
9 Richard Shintaku² each own a 15% membership interest in HMC Service Center, LLC, and that
10 Mr. Fujinaga owns, either directly or indirectly, the remaining 70% membership interest.³

11 The Receiver has verified that Mr. Fujinaga directly or indirectly owns 70% of HMC
12 Service Center, LLC, but the Receiver has been unable to confirm the rightful owner of the
13 remaining 30% interest. See id. at ¶ 10. Specifically, there is currently insufficient information
14 to confirm to the Receiver's satisfaction that the putative minority members paid good and
15 sufficient consideration for their membership interests. See id. The Receiver continues its
16 efforts to determine whether these are bona fide claims. See id.

17 In the interim, however, the Receiver submits that the Estate would be best served by
18 undertaking efforts to sell the Harmon Property now, without waiting until the claims of putative
19 minority members are fully and finally resolved. See id. at ¶ 9. Accordingly, the Receiver seeks
20 authority to list, market, and enter into a contingent purchase and sale agreement, with the
21 understanding that should a sale be ultimately approved by the Court upon subsequent motion,
22 the Receiver will hold 30% of the net sale proceeds pending resolution of the minority members'
23 claims, if any. See id. at ¶ 11.

24 ¹ Junzo Suzuki is a co-defendant with Edwin Fujinaga in the criminal case styled
25 *USA vs. Fujinaga et al.*, Case No. 2:15-cr-00198-LDG-NJK, pending in the United
26 States District Court of the District of Nevada.

27 ² Richard Shintaku was a resident of Henderson, Nevada, now deceased.

28 ³ The available documents indicate that Edwin Fujinaga owns a 65% membership
interest, and CSA Healthcare International Funding Corp., which upon information
and belief is wholly owned by Edwin Fujinaga, owns a 5% interest.

1 **IV. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE CIRCUMSTANCES**
2 **AND SHOULD BE APPROVED.**

3 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
4 a receiver concerning the administration of the estate. That rule provides for service of the notice
5 of hearing on such motions on all creditors of the receivership estate. No hearing has been set on
6 this Motion and the provisions of Local Civil Rule 66-5 do not specifically apply. Moreover, any
7 sale of the Harmon Property will be the subject of a motion to approve the sale, which would be
8 served upon the affected lienholders, and on all known non-consumer creditors of the estate and
9 on known taxing authorities with a potential claim in the receivership estate ("Notice Parties"), to
10 provide them notice and an opportunity to be heard concerning the Motion.

11 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order
12 that notice of this Motion via the Court's CM/ECF system is sufficient. The Receiver submits
13 that such service provides sufficient notice and an opportunity for hearing to the interested
14 parties and should be approved as adequate. Moreover, any objecting parties would be notified
15 and provided an opportunity to object should the Receiver seek to approve any offer to purchase
16 the Harmon Property.

17 There is ample authority for approval of the scope and method of notice as set forth
18 above. This Court, as a court of equity supervising the receivership estate, may make appropriate
19 administrative orders governing the receivership, including limitations on and changes in notice
20 and other procedures. See F.R.C.P. 5(a) and (c) (authorizing the court to modify service
21 procedures when numerous defendants are involved in litigation). In addition, pursuant to Local
22 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in
23 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."
24 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
25 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical
26 administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269 B.R. 428, 442
27 (C.D. Cal. 201) (referencing in dicta in the court's recitation of facts the bankruptcy court's order
28 limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining the phrase "after notice and

1 a hearing" to mean "after such notice as is appropriate in the particular circumstances, and such
2 opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C. § 105(a)
3 and (d) (granting broad equitable powers to the court to issue orders "necessary or appropriate to
4 carry out the provisions" of title 11 including "prescribing such limitations and conditions as the
5 court deems appropriate to ensure the case is handled expeditiously and economically"); and F.R.
6 Bankr. P. 202(m) (authorizing the court to enter "orders designating the matters in respect to
7 which, the entity to whom, and the form and manner in which notices shall be sent except as
8 otherwise provided by these rules").

9 **IV. CONCLUSION**

10 For the foregoing reasons, it is respectfully requested that the Court grant relief as
11 requested in the Motion.

12 Dated March 3, 2016.

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

9 SECURITIES AND EXCHANGE COMMISSION,

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

10 Plaintiff,
11 vs.

DECLARATION OF M. VAL MILLER IN SUPPORT OF MOTION FOR ORDER (1) AUTHORIZING THE RECEIVER TO LIST AND MARKET FOR SALE THE REAL PROPERTY LOCATED AT 150 E HARMON; AND, (2) GRANTING RELIEF FROM LOCAL RULE 66-5 PERTAINING TO NOTICE TO CREDITORS

12 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

13 Defendants,

14 and

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

17 Relief Defendants.
18

19 I, M. VAL MILLER, declare:

20 1. I am an Executive Vice President and a member of Robb Evans & Associates
21 LLC, the court-appointed receiver (the "Receiver") in this case. I am one of the deputies to the
22 Receiver responsible for the day-to-day supervision of the receivership estate. If called upon to
23 testify as to the facts set forth in this declaration, I could and would testify competently thereto as
24 the facts are true and within my personal knowledge or I have gained knowledge of such facts
25 from the books and records of the receivership proceeding, including the books and records of
26 the entities subject to the receivership.
27
28

1 2. I am authorized to make this Declaration in support of the Receiver's *Motion for*
2 *Order (1) Authorizing The Receiver to List and Market for Sale the Real Property Located at 150*
3 *E Harmon; And, (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors.*

4 3. The Receiver was appointed to act as an equity receiver in the above-captioned
5 case by that certain Order Appointing an Equitable Receiver entered on February 23, 2015 (Dkt.
6 194), which commanded and authorized the Receiver to, among other things, take and retain
7 immediate possession, custody, and control of certain commercial properties owned or controlled
8 by Defendant Edwin Fujinaga and others.

9 4. The duties and responsibilities of the Receiver were enlarged by that certain Order
10 Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and
11 Enforce the Final Judgment entered on May 15, 2015 (the "Order Appointing Receiver") (Dkt.
12 226). The Order Appointing Receiver supersedes the previous order, and directs the Receiver to
13 take and retain immediate possession, custody, and control of all assets owned or controlled,
14 directly or indirectly, by any of the Defendants in the SEC Receivership Litigation, including
15 HMC Service Center, LLC, the owner of the Harmon Property (defined below). *Id.*

16 5. The Harmon Property consists of the former Harmon Medical Center, which is a
17 two-story structure containing a total area of 25,741 square feet built upon a 1.62-acre site
18 located at 150 E. Harmon Street, Las Vegas, Nevada 89109 (the "Harmon Property") and
19 identified by the Clark County Assessor as parcel no. 162-21-202-004, title to which is held in
20 the name of HMC Service Center, LLC.

21 6. The Harmon Property currently has a single tenant, and accordingly, the Receiver
22 has been acting as landlord pursuant to the Order Appointing Receiver at ¶ 6.¹

23 7. The single tenant recently served notice of its intent to terminate its tenancy at the
24 Harmon Property when its lease expires on December 31, 2016.

25
26 _____
27 ¹ Paragraph 6 of the Order Appointing Receiver provides, "[i]nsofar as there is a
28 tenant occupying a portion of the property located at 150 East Harmon Avenue, Las Vegas, Nevada, the Receiver shall take over the role of landlord, collect all rents and issues paid by the tenant, and take over the occupancy of the property upon the expiration or termination of the lease." (Dkt. 226).

1 8. The Receiver has no plans to start or restart any Estate business at the Harmon
2 Property after the sole tenant vacates the premises. It therefore appears that after December 31,
3 2016, the Harmon Property will cease to generate any income, that there would be no on-going
4 business at the Harmon Property, and that the Harmon Property would be subject to increased
5 risk of damage, vandalism and theft.

6 9. The Receiver has determined in its business judgment that the interests of the
7 Estate and its creditors would best be served by engaging a broker to list and market Harmon
8 Property for sale, and by this Motion, the Receiver therefore requests Court authority to do so.

9 10. The Receiver has verified that Mr. Fujinaga directly or indirectly owns 70% of
10 HMC Service Center, LLC, but the Receiver has been unable to confirm the rightful owner of the
11 remaining 30% interest. Specifically, there is currently insufficient information to confirm to the
12 Receiver's satisfaction that the putative minority members paid good and sufficient consideration
13 for their membership interests. The Receiver continues its efforts to determine whether these are
14 bona fide claims.

15 11. The Receiver seeks authority to list, market, and enter into a contingent purchase
16 and sale agreement, with the understanding that should a sale be ultimately approved by the
17 Court upon subsequent motion, the Receiver will hold 30% of the net sale proceeds pending
18 resolution of the minority members' interests, if any.

19 These declarations are made under penalty of perjury under the laws of the State of
20 Nevada and the United States of America.

21 Dated March 3 , 2016.
22 
23 _____
24 M. VAL MILLER

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