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

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 vs.

13 EDWIN YOSHIHIRO FUJINAGA and
14 MRI INTERNATIONAL, INC.,

15 Defendants,

16 and

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

20 Relief Defendants.

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

**MOTION FOR ORDER (1)
APPROVING AND AUTHORIZING
PAYMENT OF RECEIVER'S AND
PROFESSIONALS' FEES AND
EXPENSES FROM JULY 1, 2016
THROUGH SEPTEMBER 30, 2016;
AND (2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

21 PLEASE TAKE NOTICE that Robb Evans & Associates LLC (the "Receiver"), pursuant
22 to the Court's Order Appointing a Full Equity Receiver to Assume Control Over the Defendants'
23 Assets and Enforce the Final Judgment (ECF No. 226) entered on May 15, 2015, hereby moves
24 the Court for the following relief:

25 1. An order approving and authorizing payment of receivership fees and expenses
26 incurred for the three-month period from July 1, 2016 through September 30, 2016 (the
27 "Reporting Period"), including payment of the fees of the Receiver, its deputies, agents, staff and
28

1 professionals, and reimbursement of costs incurred during the Reporting Period in the total sum
2 of \$276,318.38 as follows:

3 a. The Receiver's fees, including those of its deputies, agents and staff, in the
4 amount of \$44,228.25, its expenses in the amount of \$24,396.91, business entity
5 expenses in the amount of \$6,956.00;

6 b. Expenses relating to the estate's real property in the amount of
7 \$172,165.36; and

8 c. Lynch Law Practice, PLLC's fees in the amount of \$27,913.95 and its
9 expenses in the amount of \$657.91;

10 2. An order deeming notice of this Motion to be sufficient under Local Civil Rule
11 66-5 based on the service of this Motion on all known non-consumer creditors of the estate, but
12 not the tens of thousands of potential consumer creditors of the estate.

13 This Motion is made pursuant to Local Civil Rules 7-2 and 66-5, the accompanying
14 memorandum of points and authorities, the Declarations of Brick Kane and Michael Lynch, and
15 the exhibits thereto filed in support hereof, the Notice of Filing Report of Receiver's Activities
16 from July 1, 2016 through September 30, 2016 (ECF No. 373), and all other pleadings and
17 documentary evidence as may be presented to the Court by the Receiver.

18 DATED January 18, 2017.

19 **LYNCH LAW PRACTICE, PLLC**

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27 *Attorney for the Receiver,*
28 *Robb Evans & Associates LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction.**

3 Robb Evans & Associates LLC was appointed receiver (the “Receiver”) in the above-
4 captioned case by that certain Order Appointing an Equitable Receiver entered on February 23,
5 2015 (ECF No. 194) as enlarged by that certain Order Appointing a Full Equitable Receiver to
6 Assume Control over the Defendants’ Assets and Enforce the Final Judgment entered on May
7 15, 2015 (the “Order Appointing Receiver”) (ECF No. 226). The Receiver’s first application for
8 fees was filed on July 16, 2015, which covered the period of February 23, 2015, through March
9 31, 2015, and was approved by order of this Court entered on August 10, 2015. (Dkts. 244,
10 258). The Receiver’s second interim application for fees and costs, which covered the period of
11 April 1, 2015 through September 30, 2015, was approved by order of this Court entered on
12 December 24, 2015 (Dkts. 284, 294). The Receiver’s third interim application for fees and costs,
13 which covers the period October 1, 2015 through December 31, 2015, was approved by order of
14 this Court on April 1, 2016 (Dkts. 313, 319). The Receiver’s fourth motion for approval of fees
15 and costs, which covered the period of January 1, 2016 through March 31, 2016, was approved
16 by order of this Court entered on June 22, 2016 (Dkts. 337, 344). The Receiver’s fifth motion for
17 approval of fees and costs, which covered the period of April 1, 2016 through June 30, 2016, was
18 approved by order of this Court entered on June 22, 2016 (Dkts. 352, 360).

19 This is the Receiver’s sixth interim application for fees and costs, and covers the period
20 from July 1, 2016 through September 30, 2016 (the “Reporting Period”).

21 **A. Summary of Operations During the Reporting Period.**

22 The Receiver’s activities during the Reporting Period are set forth in the Report of
23 Receiver’s Activities from July 1, 2016 through September 30, 2016, filed on December 21,
24 2016 (ECF No. 373), a true and correct copy of which is attached hereto for ease of reference as
25 **Exhibit “1”**.

26 **B. Ongoing Administrative and Other Activities by the Receiver and Counsel.**

27 In addition to the activities summarized in the Report of Receiver’s Activities attached
28 hereto, the Receiver's services and those of its counsel include numerous other administrative

1 and legal activities during this Reporting Period. The Receiver's deputies and staff respond to
2 and cooperate with law enforcement inquiries and activities as required. The Receiver's deputies
3 and staff respond to inquiries from creditors, prepare and reconcile the Receiver's accounting
4 records for the case, address tax issues concerning the estate, deal with banks and other financial
5 institutions which may have receivership funds or documentation for accounts of Receivership
6 Defendants and perform other similar administrative tasks.

7 The Receiver's counsel prosecutes and defends various lien claims and reviews and
8 monitors Court filings in several federal and state cases as they may pertain to the interests of the
9 estate, responds to inquiries received from creditors and others, including taxing authorities,
10 issues demand letters to protect and investigate assets of the estate, files notices of pending
11 actions to protect real estate assets if deemed appropriate, and also performs numerous other
12 tasks in advising the Receiver and rendering services as the Receiver's counsel to protect the
13 estate, pursue claim enforcement, and advance the interests of the estate.

14 Numerous and varied issues arise in the supervision and administration of the estate by
15 the Receiver which are detailed in the billing records of the Receiver and its counsel filed in
16 support of this Motion. The Receiver performs regular accounting and bank reconciliations for
17 the receivership accounts, and maintains and updates creditor lists for the case and responds to
18 creditor and other inquiries.

19 **II. The Fees and Expenses of the Receiver and Its Professionals Should Be Approved.**

20 It is a fundamental tenet of receivership law that expenses of administration incurred by
21 the receiver, including those of the receiver, its counsel and others employed by the receiver,
22 constitute priority expenses for which compensation should be paid from the assets of the
23 receivership. As explained in the leading receivership treatise, Clark on Receivers:

24 The obligations and expenses which the court creates in its
25 administration of the property are necessarily burdens on the
26 property taken possession of, and this, irrespective of the question
27 who may be the ultimate owner, or who may have the preferred
28 lien, or who may invoke the receivership. The appointing court
pledges its good faith that all duly authorized obligations incurred
during the receivership shall be paid.

1 2 Clark, Ralph Ewing, A Treatise on the Law and Practice of Receivers § 637, p. 1052 (3rd ed.
2 1992).

3 The Motion, and the declarations and the exhibits thereto submitted in support hereof,
4 establish that the Receiver, its deputies, staff and counsel rendered extensive and complex
5 services and obtained significant and beneficial results for the receivership estate during the
6 Reporting Period. *See Federal Trade Commission v. Capital Acquisitions & Management Corp.*,
7 2005 U.S. Dist. LEXIS 18504 (N.D. Ill. August 26, 2005). The activities in the receivership by
8 both the Receiver and its counsel are wide-ranging and varied as the Receiver has taken control
9 of and obtained information regarding scores of entities in numerous locations, protected and
10 preserved records, taken control of and liquidated assets, and obtained voluminous banking,
11 financial and business records from many different sources. The billing rates charged in this case
12 and reflected in the billing records filed in support of the Motion for the Receiver, the Receiver's
13 members, and its senior accounting staff are discounted at 10% from the rates charged in private
14 sector cases as of the time of the Receiver's appointment.

15 The rates charged by counsel are also discounted by 10% from standard hourly billing
16 rates. The Receiver submits that its fees and costs, and those of its counsel, are reasonable in
17 light of the services rendered and the results obtained and that the fees and expenses requested
18 should be awarded in their entirety.

19 **III. Notice of This Motion Is Sufficient Under the Circumstances and Should Be**
20 **Approved.**

21 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
22 a receiver concerning the administration of the estate. That rule provides for service of the notice
23 of hearing on such motions on all creditors of the receivership estate. No hearing has been set on
24 this Motion and the provisions of Local Civil Rule 66-5 do not specifically apply. Nevertheless,
25 the Receiver will serve the Motion on the parties, the affected lienholders, and on all known non-
26 consumer creditors of the estate and on known taxing authorities with a potential claim in the
27 receivership estate (“Notice Parties”), to provide them notice and an opportunity to be heard
28

1 concerning the Motion. This notice is consistent with notice previously approved by the Court in
2 this case.

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

13 Based on the foregoing, to the extent that Local Rule 66-5 applies to this motion, the
14 Receiver seeks an order providing that the notice requirement of that rule shall be deemed
15 satisfied if notice of the filing of the motion is given by serving copies of all motion papers on
16 the parties to the action and by serving copies of the notice of filing of the motion on all known
17 non-consumer creditors. The Receiver submits that such service provides sufficient notice and an
18 opportunity for hearing to the interested parties and should be approved as adequate. This limited
19 notice is consistent with the notice approved by the court concerning the prior fee motions. (*See*
20 *e.g.*, ECF No. 245).

21 There is ample authority for approval of the scope and method of notice as set forth
22 above. This Court, as a court of equity supervising the receivership estate, may make appropriate
23 administrative orders governing the receivership, including limitations on and changes in notice
24 and other procedures. *See* F.R.C.P. 5(a) and (c) (authorizing the court to modify service
25 procedures when numerous defendants are involved in litigation). In addition, pursuant to Local
26 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in
27 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."
28 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all

1 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical
2 administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R. 428, 442
3 (C.D. Cal. 201) (referencing in dicta in the court’s recitation of facts the bankruptcy court’s order
4 limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining the phrase “after notice and
5 a hearing” to mean “after such notice as is appropriate in the particular circumstances, and such
6 opportunity for hearing as is appropriate in the particular circumstances”); 11 U.S.C. § 105(a)
7 and (d) (granting broad equitable powers to the court to issue orders “necessary or appropriate to
8 carry out the provisions” of title 11 including “prescribing such limitations and conditions as the
9 court deems appropriate to ensure the case is handled expeditiously and economically”); and
10 F.R. Bankr. P. 2002(m) (authorizing the court to enter “orders designating the matters in respect
11 to which, the entity to whom, and the form and manner in which notices shall be sent except as
12 otherwise provided by these rules”).

13 **IV. Conclusion.**

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

16 Dated January 18, 2017.

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6 *& Associates LLC*

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

9 SECURITIES AND EXCHANGE
10 COMMISSION,

11 Plaintiff,

12 vs.

13 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

14 Defendants,

15 and

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

19 Relief Defendants.

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

**DECLARATION OF BRICK KANE IN
SUPPORT OF MOTION FOR ORDER
(1) APPROVING AND
AUTHORIZING PAYMENT OF
RECEIVER’S AND
PROFESSIONALS’ FEES AND
EXPENSES FROM JULY 1, 2016
THROUGH SEPTEMBER 30, 2016;
AND (2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

20 I, Brick Kane, declare:

21 1. I am the president and chief operating officer of Robb Evans & Associates LLC,
22 the court-appointed equitable receiver (the “Receiver”). I am one of the members of the
23 Receiver primarily responsible for the supervision and administration of the Receivership estate.

24 If called upon to testify as to the facts set forth in this declaration, I could and would testify
25 competently thereto as the facts are personally known to me to be true or I have gained
26 knowledge of the facts through my supervision and administration of the Receivership estate.

27 2. On January 27, 2015, the Clerk of Court entered judgment against Defendants
28 (ECF No. 189) (the “Judgment”) pursuant to Court’s order granting summary judgment in favor

1 of plaintiff Securities and Exchange Commission (the “SEC”).

2 3. On February 23, 2015, the Court issued its Order Appointing an Equitable
3 Receiver (ECF No. 194) pursuant to which the Receiver was appointed as receiver for various
4 commercial properties and their rents and profits as more fully set forth therein.

5 4. On February 25, 2015, the Court issued its Rule 54(b) Certification (ECF No.
6 195) pursuant to which the judgment was made the final judgment as to the Defendants.

7 5. The Receiver’s duties and responsibilities were enlarged by that certain Order
8 Appointing a Full Equitable Receiver to Assume Control over the Defendants’ Assets and
9 Enforce the Final Judgment entered on May 15, 2015 (the “Order Appointing Receiver”) (ECF
10 No. 226). The Order Appointing Receiver supersedes the previous order, and directs Receiver to
11 take and retain immediate possession, custody, and control of all assets owned or controlled,
12 directly or indirectly, by any of the Defendants in the SEC Receivership Litigation. *Id.*

13 6. On July 16, 2015, the Receiver filed its first motion for approval and payment of
14 Receiver’s fees and expenses, which was approved by order of this this Court entered on August
15 10, 2015. (ECF Nos. 244, 258).

16 7. On November 30, 2015, the Receiver filed its second motion for approval and
17 payment of Receiver’s fees and expenses, which was approved by order of this this Court entered
18 on December 24, 2015. (ECF Nos. 284, 294).

19 8. On March 14, 2016, the Receiver filed its third motion for approval of fees and
20 costs, which covered the period of October 1, 2015 through December 31, 2015, which was
21 approved by order of this Court entered on April 1, 2016 (ECF Nos. 313, 319).

22 9. On May 31, 2016, the Receiver filed its fourth motion for approval of fees and
23 costs, which covered the period of January 1, 2016 through March 31, 2016, which was
24 approved by order of this Court entered on June 22, 2016 (ECF Nos. 337, 344).

25 10. On August 29, 2016, the Receiver filed its fifth motion for approval of fees and
26 costs, which covered the period of April 1, 2016 through June 30, 2016, which was approved by
27 order of this Court entered on June 22, 2016 (ECF Nos. 352, 360).

28

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

9 SECURITIES AND EXCHANGE
COMMISSION,

10 Plaintiff,

11 vs.

12 EDWIN YOSHIHIRO FUJINAGA and
13 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

**DECLARATION OF MICHAEL
LYNCH IN SUPPORT OF MOTION
FOR ORDER (1) APPROVING AND
AUTHORIZING PAYMENT OF
RECEIVER’S AND
PROFESSIONALS’ FEES AND
EXPENSES FROM JULY 1, 2016
THROUGH SEPTEMBER 30, 2016;
AND (2) GRANTING RELIEF FROM
LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

20 I, Michael F. Lynch, declare:

21 1. I am an attorney at law duly licensed and authorized to practice before all courts
22 in the State of Nevada, and am the managing member of Lynch Law Practice, PLLC (“Lynch
23 Law”), counsel for Robb Evans & Associates LLC, the court-appointed equitable receiver (the
24 “Receiver”). If called upon to testify as to the facts set forth in this declaration, I could and
25 would testify competently thereto as the facts are personally known to me to be true.

26 2. On July 16, 2015, the Court appointed Lynch Law as counsel for the Receiver by
27 minute order (ECF No. 247), and the proposed Order Appointing Counsel for Receiver (ECF No.
28

1 250) was approved by minute order of the Court entered on August 20, 2015 (the “Order
2 Appointing Counsel”). (ECF No. 261).

3 3. The Order Appointing Counsel provides that, upon request of the Receiver, the
4 Receiver’s counsel shall provide legal assistance to the Receiver in connection with the
5 discharge of the Receiver’s duties and responsibilities pursuant to the Order Appointing
6 Receiver,¹ and directed the Receiver’s counsel to neither perform, nor seek compensation for,
7 any of the non-legal tasks enumerated in the Order Appointing Receiver.

8 4. The Order Appointing Counsel authorizes Lynch Law to provide legal assistance
9 in connection with the following:

10 a. Providing legal advice to the Receiver concerning the Order Appointing
11 Receiver, including the legal interpretation of any provisions contained therein, or any
12 other order or filing in this case concerning the Receiver;

13 b. Providing legal advice to the Receiver concerning the disposition or
14 possession of any assets subject to the Order Appointing Receiver, including records
15 containing personal, financial or medical information and controlled substances;

16 c. Providing legal advice and representation in connection with obtaining
17 cooperation, compliance or assistance from the Defendants or any other entities claiming
18 to have an interest in the assets subject to the Order Appointing Receiver;

19 d. Providing legal advice and representation in connection with any civil or
20 criminal actions in which one or more of the Defendants is a party, including *Hoy’s, Inc.*
21 *v. EBJ&F, LLC*, Case No. 2:13-cv-912 (D. Nev.), but not including *Takiguchi v. MRI*
22 *International, Inc.*, Case No. 2:13-cv-1183 (D. Nev.);

23 e. Providing legal advice and representation in connection with any legal
24 claims made against the Defendants or any assets subject to the Order Appointing
25 Receiver; and

26
27
28 ¹ The “Order Appointing Receiver” means the Order Appointing a Full Equitable Receiver to Assume Control over the Defendants’ Assets and Enforce the Final Judgment entered on May 15, 2015. (ECF No. 226).

1 f. Providing legal advice and representation in connection with any civil or
2 other actions in which the Receiver is a party, including any legal actions instituted by the
3 Receiver pursuant to the Order Appointing Receiver, such as levying on assets, filing
4 collection actions or filing fraudulent transfer actions, and any legal filings requiring the
5 assistance of counsel.

6 5. The Order Appointing Counsel further provides that the compensation of Lynch
7 Law shall be fixed at \$310.50 per hour, which rate reflects a 10% discount on Lynch Law's
8 regular rate.

9 6. This Declaration is made and submitted in support of the Receiver's sixth motion
10 for approval and payment of fees and expenses, entitled *Motion for Order (1) Approving and*
11 *Authorizing Payment of Receiver's and Professionals' Fees and Expenses from July 1, 2016*
12 *Through September 30, 2016; and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice*
13 *to Creditors* (the "Motion") filed contemporaneously herewith.

14 7. The Motion seeks, among other relief, approval and authorization for payment of
15 the Receiver's legal fees and expenses for the three-month period from July 1, 2016 through
16 September 30, 2016 (the "Reporting Period").

17 8. Lynch Law has acted as sole counsel for the Receiver since the Order Appointing
18 Counsel was entered. Lynch Law and the Receiver have coordinated their efforts to ensure that
19 the Receiver's and Lynch Law's responsibilities for work were strictly maintained to prevent
20 duplication of efforts.

21 9. Attached hereto as **Exhibit "1"**, are true and correct copies of Lynch Law's
22 invoices for fees and costs during the Reporting Period. The detailed descriptions of work done
23 on this invoice have been redacted where appropriate to preserve descriptions containing
24 confidential, sensitive, tactical, strategic, and attorney/client privileged and/or attorney work-
25 product information.

26 10. I personally enter time and/or personally verify billable time and cost entries in
27 the Lynch Law software at or about the time the billable time and costs are incurred. The
28 invoices attached hereto is prepared from computerized time and expense records prepared in the

1 ordinary course of business that accurately record the time actually spent and the expenses
2 actually incurred. The time records are entered into Lynch Law's time-keeping and billing
3 software that generates invoices reviewed by Michael Lynch. Based upon my experience and
4 personal involvement in this process, I believe that Lynch Law's methods and procedures for
5 recording and accounting for time and services for its clients are reliable and accurate.

6 11. During the Reporting Period, Lynch Law obtained and analyzed bank records,
7 escrow files, loan documents, security instruments, made demands and issued subpoenas to
8 evaluate the estate's interest in funds held in the One-Stop Pharmacy account, and related
9 payments made to the principal of One-Stop Pharmacy from the proceeds of the sale of the
10 pharmacy.

11 12. Also during the Reporting Period, Lynch Law, in coordination with the Receiver,
12 Lynch Law evaluated, analyzed, and respond to June Fujinaga's demands with respect to
13 accounts discovered and frozen by the Receiver, and researched and responded to June
14 Fujinaga's claims concerning social security payments and hardship.

15 13. Also during the Reporting Period, Lynch Law, in coordination with the Receiver,
16 Lynch Law assisted in the estate's recovery of possession and control of 2 condominium units
17 located at 125 E. Harmon, as well as the rents generated by the same, and analyzed and evaluated
18 the encumbrances and leases affecting the condominiums.

19 14. Lynch Law assisted the Receiver's efforts to close the purchase and sale
20 agreement for the Durango properties, evaluated and responded to the potential buyer's
21 objections to title exceptions, and satisfied the underwriter's concerns and requirements in
22 connection with closing the sale.

23 15. Lynch Law extensively participated in, and assisted the Receiver's, efforts to
24 close the purchase and sale agreement for the Hawaii property, negotiated a compromise
25 addendum to the proposed purchase and sale agreement, and a stipulation to approve the sale that
26 satisfied the defendants', the buyers', the underwriter's and the Receiver's concerns and
27 requirements while fully complying with relevant state and federal law and the order appointing
28 receiver.

