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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 STEVE CHEN, USFIA, INC.,
19 ALLIANCE FINANCIAL GROUP,
INC., AMAUCTION, INC., ABORELL
20 MGMT I, LLC, ABORELL ADVISORS
I, LLC, ABORELL REIT II, LLC,
21 AHOME REAL ESTATE, LLC,
ALLIANCE NGN, INC., APOLLO
22 REIT I, INC., APOLLO REIT II, LLC,
AMKEY, INC., US CHINA
23 CONSULTATION ASSOCIATION, and
QUAIL RANCH GOLF COURSE, LLC,

24 Defendants.
25

Case No. 2:15-cv-07425 RGK-GJS

**NOTICE OF MOTION AND
MOTION FOR AUTHORITY TO
SELL PERSONAL PROPERTY;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: March 27, 2017
Time: 9:00 a.m.
Ctvm: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on March 27, 2017, at 9:00 a.m. in
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street,
4 Los Angeles, California 90012-3332, Thomas A. Seaman ("Receiver"), the Court-
5 appointed permanent receiver for Defendants USFIA, Inc., Alliance Financial
6 Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC,
7 Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo
8 REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation
9 Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates
10 (collectively, "Receivership Entities"), will and hereby does move the Court for
11 Authority to Sell Personal Property ("Motion").

12 This Motion is based on this Notice of Motion and Motion, the attached
13 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the
14 documents and pleadings already on file in this action, and upon such further oral
15 and documentary evidence as may be presented at the time of the hearing.

16 **Procedural Requirements:** If you oppose this Motion, you are required to
17 file your written opposition with the Office of the Clerk, United States District
18 Court, 255 East Temple Street, Los Angeles, California 90012-3332 and serve the
19 same on the undersigned not later than twenty-one (21) calendar days prior to the
20 hearing.

21 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
22 above date, the Court may grant the requested relief without further notice. This
23 Motion is made following the conference of counsel pursuant to L.R. 7-3.

24 Dated: February 22, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: _____ /s/ Edward Fates

Edward G. Fates
Attorneys for Receiver
THOMAS A. SEAMAN

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Receiver hereby seeks authority to sell the personal property owned by
4 the Receivership Entities, including automobiles, furniture, fixtures, equipment,
5 ornamental gem and jewelry inventory, six certified diamonds found at the
6 Receivership Entities' offices, computers and audio-visual equipment, artwork and
7 decorative items, designer handbags and shoes, ammunitions, guns, and other items,
8 but excluding personal property associated with operation of the Hills Garden Hotel
9 and the apartment building in Alhambra ("Personal Property").

10 Upon his appointment, and pursuant to the authority conferred by the Court's
11 orders, the Receiver took possession of the premises at which the Receivership
12 Entities operated, as well as the residential properties owned by the Receivership
13 Entities, and secured the Personal Property at each location. As discussed in the
14 Receiver's interim reports, none of the Receivership Entities, with the exception of
15 the Hills Garden Hotel and the apartment building in Alhambra, generated any
16 revenue other than funds raised from investors. Accordingly, the Receiver ceased
17 operations of the Receivership Entities, other than the hotel and apartment building,
18 and terminated their employees. Thus, the Personal Property is no longer necessary
19 to the Receivership Entities and continuing to store it is a considerable, unnecessary
20 expense. The Receiver also plans to market and sell the office building in Arcadia
21 owned by the Receivership Entities where the majority of the Personal Property is
22 located. Any and all items located therein will need to be removed. Declaration of
23 Thomas A. Seaman filed herewith ("Seaman Decl.") ¶ 3.

24 The Receiver proposes to have the Personal Property, with the exception of
25 the automobiles, sold via live and online auction by Tranzon Asset Strategies
26 ("Tranzon"), a licensed, qualified auctioneer with extensive experience in selling
27 assets held in receivership and bankruptcy estates. Tranzon's proposal is attached to
28 the Seaman Declaration as **Exhibit A**. Tranzon will market the Personal Property to

1 specific target markets through direct mail, newspaper advertisements, website
2 postings, press releases, and email. Tranzon will receive a commission of 15%
3 payable by the successful bidders in the form of a buyer's premium on the sales
4 price and will be reimbursed for out-of-pocket marketing and sale expenses up to
5 \$22,815.00. After consulting with Tranzon, the Receiver estimates the gross sale
6 proceeds from the Personal Property (excluding the automobiles) will be
7 approximately \$125,000. *Id.* at ¶ 4.

8 The automobiles consist of a 2014 Mercedes Sprinter van purchased for
9 \$96,886.45 and a 2013 Airstream Interstate RV purchased for \$100,411.20. The
10 Receiver requests authority to sell the automobiles through Elite Dealer Sales
11 ("Elite"), a licensed automobile dealer with 35 years of experience in selling used
12 automobiles, and to pay Elite a commission of 6% of the purchase prices from the
13 sale proceeds. If the Receiver is able to find a buyer who will pay more than the net
14 proceeds generated by Elite, he will complete the sale himself to such buyer. *Id.* at
15 ¶ 5.

16 The proposed sales will maximize the net recovery from the Personal
17 Property. Accordingly, the Receiver recommends the Personal Property be sold for
18 the benefit of the Receivership Estate.

19 **II. PROCEDURAL BACKGROUND**

20 On September 28, 2015, the Court appointed the Receiver on a temporary
21 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;
22 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;
23 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to
24 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.
25 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:
26 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of
27 Documents; and (4) Requiring Accountings ("PI Order"), which included
28

1 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the
2 TRO and PI Order are collectively referred to as the "Appointment Orders."

3 **III. ARGUMENT**

4 "The power of a district court to impose a receivership or grant other forms of
5 ancillary relief does not in the first instance depend on a statutory grant of power
6 from the securities laws. Rather, the authority derives from the inherent power of a
7 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
8 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
9 and efficient administration of the estate by the district court for the benefit of
10 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
11 of a receiver is authorized by the broad equitable powers of the court, any
12 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
13 953 F.2d 1560, 1569 (11th Cir. 1992).

14 District courts have the broad power of a court of equity to determine the
15 appropriate action in the administration and supervision of an equity receivership.
16 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
17 Circuit explained:

18 A district court's power to supervise an equity receivership
19 and to determine the appropriate action to be taken in the
20 administration of the receivership is extremely broad. The
21 district court has broad powers and wide discretion to
22 determine the appropriate relief in an equity receivership.
23 The basis for this broad deference to the district court's
24 supervisory role in equity receiverships arises out of the
25 fact that most receiverships involve multiple parties and
26 complex transactions. A district court's decision
27 concerning the supervision of an equitable receivership is
28 reviewed for abuse of discretion.

24 *Id.* (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*
25 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
26 to the court's supervisory role, and 'we generally uphold reasonable procedures
27 instituted by the district court that serve th[e] purpose' of orderly and efficient
28 administration of the receivership for the benefit of creditors.").

1 Accordingly, this Court has broad equitable powers and discretion in
2 formulating procedures, schedules and guidelines for administration of the
3 Receivership Estate and disposition of receivership assets.

4 **A. The Proposed Sale**

5 It is generally conceded that a court of equity having custody and control of
6 property has power to order a sale of the same in its discretion. *See, e.g., Elliott,*
7 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
8 discretion to determine relief in an equity receivership). "The power of sale
9 necessarily follows the power to take possession and control of and to preserve
10 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
11 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
12 (citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.
13 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
14 equity orders property in its custody to be sold, the court itself as vendor confirms
15 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law and Practice of*
16 *Receivers* § 487).

17 "A court of equity, under proper circumstances, has the power to order a
18 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
19 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
20 Clark, *Treatise on Law & Practice of Receivers* § 500. To that end, a federal court
21 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*
22 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
23 allowing time to redeem property after a foreclosure sale not applicable in a
24 receivership sale).

25 Generally, when a court-appointed receiver is involved, the receiver, as agent
26 for the court, should conduct the sale of the receivership property. *Blakely Airport*
27 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
28 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an

1 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
3 Clark, *Treatise on Law and Practice of Receivers* §§ 342, 344, 482(a), 487, 489,
4 491. "In authorizing the sale of property by receivers, courts of equity are vested
5 with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354,
6 357 (9th Cir. 1925).

7 Here, the Receiver seeks authority to sell the Personal Property for the benefit
8 of the Receivership Estate. The Personal Property items consist mainly of
9 automobiles, ornamental gem and jewelry inventory, five certified diamonds found
10 at the Receivership Entities' offices, computers and audio-visual equipment, artwork
11 and decorative items, designer handbags and shoes, ammunitions, and guns. None
12 of the Personal Property is necessary to the Receivership Entities' remaining
13 business operations. The continued costs of storing and securing the Personal
14 Property constitute a significant and unnecessary expenses.

15 The Receiver and his staff have many years of experience in handling
16 auctions of personal property included in receivership estates. Likewise, Tranzon
17 has extensive experience is marketing and selling personal property assets of all
18 types and has handled numerous sales and auctions of personal property held in
19 receivership and bankruptcy estates. Based on his experience in selling personal
20 property assets, the Receiver believes a 15% commission is consistent with industry
21 standards for licensed auctioneers and that the proposed budget for reimbursable
22 expenses is reasonable in relation to the value of the Personal Property being sold by
23 Tranzon. Seaman Decl., ¶ 6.

24 As discussed above, the Receiver proposes to sell the automobiles through
25 Elite, an experienced, licensed dealer. Through his experience in selling
26 automobiles, the Receiver believes 6% is a reasonable commission for the sale of
27 used vehicles by a licensed dealer and is consistent with industry standards. *Id.* at
28 ¶ 7.

1 The proposed sales will maximize the net recovery from the Personal
2 Property. Accordingly, the Personal Property should be sold, the commissions
3 discussed above paid, and the net proceeds retained for the benefit of investors and
4 creditors.

5 **B. Further Notices/Appraisals Should Be Waived**

6 Sales for personal property out of receivership is governed under 28 U.S.C.
7 § 2004 which provides that such property "shall be sold in accordance with
8 section 2001." 28 U.S.C. § 2004. 28 U.S.C. § 2001 provides that notice shall be
9 given "by publication or otherwise as the court directs" 28 U.S.C. § 2001(b).
10 Thus, "[t]he statute on its face vests the court with discretion in directing the terms
11 and conditions of the public sale." *Keybank Nat'l Ass'n v. Perkins Rowe*
12 *Assocs., L.L.C.*, 2012 U.S. Dist. LEXIS 157828, *4 (M.D. La. 2012); *see also*
13 *U.S. v. Little*, 2008 U.S. Dist. LEXIS 93467, *4-5 (E.D. Cal. 2008) (finding that
14 "[t]he Court has broad discretion in setting the terms and conditions of a sale
15 pursuant to 28 U.S.C. § 2001."); *U.S. v. Heasley*, 283 F.2d 422 (8th Cir. 1960)
16 (finding that in the context of 28 U.S.C. § 2001(b), "the matter of confirming a
17 judicial sale rests in the sound judicial discretion of the trial court . . ."); *U.S. v.*
18 *Peters*, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C. § 2001(a) authorizes a
19 court to direct the terms and conditions of the sale).

20 Here, the Receiver submits that the requirement under 28 U.S.C. § 2001(b)
21 for three independent appraisals and separate publication of notice imposes a
22 considerable financial burden on the receivership estate with no corresponding
23 benefit given the relatively limited value of the Personal Property and the fact the
24 Personal Property will be marketed and advertised by a licensed, qualified
25 auctioneer prior to sale. In addition, the proposed sale by auction by an experienced
26 auctioneer is customary and widely recognized as the best way to maximize the net
27 recovery from personal property. Accordingly, to the extent 28 U.S.C. §§ 2001,
28

1 2004 and Local Rule 66-7 require further mailing or publication of notice,
2 appraisals, or other procedures, such provisions should be waived.

3 **IV. CONCLUSION**

4 For the reasons set forth herein, the Receiver respectfully requests an order
5 authorizing him to sell the Personal Property, pay Tranzon pursuant to the terms
6 discussed above and as provided in the proposal attached to the Seaman Declaration
7 as Exhibit A, and pay Elite a commission of 6% of the purchase prices of the
8 automobiles.

9
10 Dated: February 22, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

11 By: _____ /s/ Edward Fates

12 Edward G. Fates
13 Attorneys for Receiver
14 THOMAS A. SEAMAN
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