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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.,  
20 ABORELL MGMT I, LLC, ABORELL  
21 ADVISORS I, LLC, ABORELL  
REIT II, LLC, AHOME REAL  
22 ESTATE, LLC, ALLIANCE  
NGN, INC., APOLLO REIT I, INC.,  
23 APOLLO REIT II, LLC, AMKEY, INC.,  
24 US CHINA CONSULTATION  
ASSOCIATION, and QUAIL RANCH  
25 GOLF COURSE, LLC,

26 Defendants.

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

**NOTICE OF AMENDED MOTION  
AND AMENDED MOTION FOR  
(A) APPROVAL OF SALE OF  
RESIDENTIAL REAL PROPERTY  
(FAIRVIEW CONDOMINIUM), AND  
(B) AUTHORITY TO PAY  
BROKER'S COMMISSION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: April 24, 2017  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on April 24, 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"), hereby moves the Court for (A) approval of  
11 sale of residential real property (Fairview Condominium), and (B) authority to pay  
12 broker's commission ("Amended Motion").

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

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

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

25 Dated: March 17, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates

EDWARD G. FATES  
Attorneys for Receiver  
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed by this Court with full powers of an equity  
4 receiver, and ordered, among other things, to take possession of and assume  
5 authority and control over the receivership estate, including that certain real property  
6 located at and commonly known as 919 Fairview Avenue, Unit B ("Fairview  
7 Condominium") – a single-family residence located in Arcadia, California.  
8 Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

9 The Fairview Condominium was acquired by Ahome Real Estate, LLC on  
10 June 11, 2015, for \$918,000. *Id.*, ¶ 4. The condominium is approximately  
11 1,550 square feet and has three bedrooms. *Id.* Shortly after his appointment, the  
12 Receiver secured the Fairview Condominium. *Id.* at ¶ 5. There was a tenant living  
13 in the property – Yang Zhou – but she was not paying the monthly rent (\$2,800). *Id.*  
14 When Ms. Zhou refused to vacate the property, the Receiver initiated an unlawful  
15 detainer action and when she failed to respond, the Court entered her default. *Id.* In  
16 February 2016, Ms. Zhou stipulated to vacate the property and paid \$8,944 to the  
17 Receiver in settlement of the unpaid rent. *Id.*

18 Given that maintaining the Fairview Condominium entails significant  
19 carrying costs to the receivership estate, including costs for maintenance, insurance,  
20 and property taxes, and that the asset has no business purpose for the benefit of the  
21 Receivership Entities, the Receiver listed the property for sale through licensed  
22 broker, Secured Properties ("Broker"). *Id.* at ¶ 6. The property was listed for  
23 125 days before the purchase contract was executed. After careful review, a recent  
24 appraisal, current comparable listings in the same complex, offers received ranging  
25 from \$715,000 to \$810,000,<sup>1</sup> and negotiations with the offering parties, the Receiver  
26  
27

28 <sup>1</sup> The \$810,000 offer was contingent on financing and the buyer was unable to demonstrate that it had sufficient cash for the down payment.

1 accepted an all cash offer from Ping Jiang ("Buyer") at \$795,000, subject to Court  
2 approval. There are no contingencies to the sale other than Court approval. *Id.*

3 In accordance with the Receiver's acceptance, the Receiver and Buyer entered  
4 into a Residential Purchase Agreement and Joint Escrow Instructions  
5 ("Agreement"). *Id.* at ¶ 7. Among other things, the Agreement specifies that the  
6 sale is subject to Court approval, is on an "AS IS" basis, and will be made with all  
7 cash. *Id.* The Agreement is attached as Exhibit A to the Seaman Declaration filed  
8 herewith.

9 In his reasonable business judgment, the Receiver believes that the  
10 Agreement, obtained through the commercially reasonable and customary method of  
11 listing the property with a licensed broker and after arm's length negotiations with  
12 Buyer, reflects the fair market value of the Fairview Condominium. *Id.* at ¶ 8.  
13 Moreover, the sale is subject to overbid and public auction procedures discussed  
14 below. Accordingly, the Receiver respectfully requests this Court grant this  
15 Amended Motion and approve: (1) the sale of the Fairview Condominium and  
16 (2) payment of the Broker's commission.

## 17 **II. PROCEDURAL BACKGROUND**

18 On September 28, 2015, the Court appointed the Receiver on a temporary  
19 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;  
20 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;  
21 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to  
22 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.  
23 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:  
24 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of  
25 Documents; and (4) Requiring Accountings ("PI Order"), which included  
26 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the  
27 TRO and PI Order are collectively referred to as the "Appointment Orders."

28

1 **III. TERMS OF THE AGREEMENT**

2 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.  
3 Its terms are summarized as follows:<sup>2</sup>

4 **Court approval.** All aspects of the Agreement and the sale are subject to  
5 approval by the Court.

6 **Purchase Price.** \$795,000.

7 **Closing Date.** Escrow to close once Court approval of the sale is granted.

8 **Deposit.** Buyers have deposited \$23,670 into escrow, refundable only if the  
9 Court does not approve the sale to Buyer.

10 **As Is Purchase.** Buyer agrees to purchase the Fairview Condominium on an  
11 "AS IS" basis.

12 **Broker's Commission.** By separate agreement, the Receiver has agreed,  
13 subject to Court approval, to pay Broker a commission of 5% of the final purchase  
14 price. Pursuant to that agreement, Broker will compensate cooperating and referring  
15 brokers, as applicable. Broker has invested substantial time into preparing the  
16 Fairview Condominium for sale, locating potential purchasers, marketing the  
17 property to them, negotiating terms, and preparing sale documents.

18 **IV. ARGUMENT**

19 "The power of a district court to impose a receivership or grant other forms of  
20 ancillary relief does not in the first instance depend on a statutory grant of power  
21 from the securities laws. Rather, the authority derives from the inherent power of a  
22 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
23 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
24 and efficient administration of the estate by the district court for the benefit of  
25 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The terms of the Agreement are summarized herein for convenience only. In the  
event of any conflict between the Agreement and the summary provided herein,  
the Agreement governs and controls.

1 of a receiver is authorized by the broad equitable powers of the court, any  
2 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
3 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

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

22 Accordingly, this Court has broad equitable powers and discretion in  
23 formulating procedures, schedules and guidelines for administration of the  
24 receivership estate and disposition of receivership assets.

25 **A. The Proposed Sale**

26 It is generally conceded that a court of equity having custody and control of  
27 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,  
28 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide  
discretion to determine relief in an equity receivership). "The power of sale  
necessarily follows the power to take possession and control of and to preserve  
property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
(9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)

1 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.  
2 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of  
3 equity orders property in its custody to be sold, the court itself as vendor confirms  
4 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*  
5 *Receivers* § 487).

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

14 Generally, when a court-appointed receiver is involved, the receiver, as agent  
15 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
16 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
17 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
18 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
19 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.  
20 "In authorizing the sale of property by receivers, courts of equity are vested with  
21 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357  
22 (9th Cir. 1925).

23 **B. 28 U.S.C. § 2001**

24 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of  
25 real property under subsection (a) and specific requirements for private sales of real  
26 property under subsection (b). Although both involve unnecessary cost and delay,  
27 the cost and delay of a public sale are significantly less than those for a private sale.  
28 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)

1 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
2 public sale; or (2) property may be sold in a private sale, provided that three separate  
3 appraisals have been conducted, the terms are published in a circulated newspaper  
4 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
5 price."). Therefore, by proceeding under Section 2001(a), the receivership estate  
6 can avoid the significant costs and delay of (a) the Court having to appoint three  
7 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

8 The requirements of a public sale under Section 2001(a) are that notice of the  
9 sale be published as proscribed by Section 2002 and a public auction be held at the  
10 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*  
11 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015); *SEC v.*  
12 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007). In terms of  
13 publication of notice, Section 2002 provides:

14 A public sale of realty or interest therein under any order, judgment  
15 or decree of any court of the United States shall not be made without  
16 notice published once a week for at least four weeks prior to the sale  
17 in at least one newspaper regularly issued and of general circulation  
18 in the county, state, or judicial district of the United States wherein  
19 the realty is situated.

18 If such realty is situated in more than one county, state, district or  
19 circuit, such notice shall be published in one or more of the counties,  
20 states, or districts wherein it is situated, as the court directs. The  
21 notice shall be substantially in such form and contain such  
22 description of the property by reference or otherwise as the court  
23 approves. The court may direct that the publication be made in other  
24 newspapers.

21 This section shall not apply to sales and proceedings under Title 11  
22 or by receivers or conservators of banks appointed by the  
23 Comptroller of the Currency.

24 The notice of sale is sufficient if it describes the property and the time, place,  
25 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
26 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
27 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
28 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction

1 of the Receiver, that it has the current ability to consummate the purchase of the  
2 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
3 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

4 **V. DISCUSSION**

5 Here, the proposed sale to Buyer should be approved. First, the Receiver  
6 believes the purchase price paid for the Fairview Condominium by Ahome Real  
7 Estate exceeded the fair market value of the property. The Receiver obtained an  
8 independent appraisal of the property, which estimated the value as \$850,000. The  
9 appraisal was based in part, however, on the list price of a similar but larger unit in  
10 the building for \$875,000. After the appraisal was received, the seller of the larger  
11 unit dropped its list price to \$850,000 and the unit sold in January 2017 for  
12 \$818,000. Seaman Decl., ¶ 9.

13 The Fairview Condominium has been fully exposed to the market by Broker  
14 over five months through the customary means of listing the property on the  
15 Multiple Listing Service ("MLS"), advertising, and holding several open houses. In  
16 response, the Receiver received and evaluated multiple offers, including that  
17 submitted by Buyer. The Receiver further negotiated the terms of the sale,  
18 including countering the offer from Buyer at a higher price, as reflected in the  
19 Agreement. *Id.* at ¶ 10.

20 Through this process, the Receiver obtained Buyer's final offer and  
21 agreement to purchase the Fairview Condominium at the price of \$795,000. This is  
22 consistent with the very recent sale of the larger unit in the same building for  
23 \$818,000. *Id.* at ¶ 11. Therefore, the Receiver believes the proposed sale represents  
24 the fair market value and will generate the highest and best recovery from the  
25 Fairview Condominium. *Id.*

26 Moreover, the proposed sale is subject to overbid and public auction. The  
27 Receiver proposes to conduct a public auction consistent with the requirements of  
28

1 Section 2001(a). Specifically, the Receiver will publish the following notice of the  
2 sale once a week for four weeks in the Los Angeles Times:

3 In the action pending in U.S. District Court for the Central District  
4 of California, Case No. 16-CV-07425-RGK-PLA, Securities and  
5 Exchange Commission v. Steve Chen et al., notice is hereby given  
6 that the court-appointed receiver will conduct a public auction for  
7 the residential real property located at 919 Fairview Avenue,  
8 Unit B, Arcadia, California. Sale is subject to Court confirmation  
9 after the auction is held. Minimum bid price is \$835,000. The  
10 auction will take place on April 24, 2017, at 9:00 a.m. in  
11 Courtroom 850 to the United States Courthouse, 255 East Temple  
12 Street, Los Angeles, California. To be allowed to participate in the  
13 auction, prospective purchasers must meet certain bid qualification  
14 requirements, including submitting a signed purchase and sale  
15 agreement, an earnest money deposit of \$23,670, and proof of  
16 funds. All bidders must be qualified by 5:00 p.m. PST on April 14,  
17 by submitting the required materials to the Thomas Seaman at  
18 3 Park Place, Suite 550, Irvine California, 92614. If interested in  
19 qualifying as a bidder, please contact Alexis Kim at (213) 200-5882  
20 or akim@securedproperties.com.

21 *Id.* at ¶ 12.

22 In order to conduct an orderly auction and provide sufficient time for the  
23 publication of notices discussed above, the Receiver will require bidders to complete  
24 the above steps by April 14, 2017 ("Bid Qualification Deadline"), and conduct the  
25 live public auction at the hearing on April 24, 2017. *Id.* at ¶ 13.

26 The Receiver will inform all interested persons of the opportunity to overbid  
27 at the public auction, provided they qualify themselves to bid by the Bid  
28 Qualification Deadline by (a) signing a purchase and sale agreement for the  
29 properties on the same terms and conditions as Buyer, but with a purchase price of  
30 at least \$835,000, (b) providing the Receiver with an earnest money deposit of  
31 \$23,670, and (c) providing proof of funds necessary to close the sale transaction in  
32 the form of a current bank statement, cashier's check delivered to the Receiver, or  
33 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 14.

34 In the event one or more prospective purchasers qualify themselves to bid, the  
35 auction will be conducted at the hearing as noted above and bids will be allowed in  
36 increments of \$5,000. The Receiver will then advise the Court of the result of the

1 auction (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest  
2 money deposits provided by bidders who are unsuccessful will be promptly returned  
3 to them. In the event no prospective purchasers qualify themselves to bid by the Bid  
4 Qualification Deadline, the Receiver will file a notice with the Court and seek entry  
5 of an order approving the sale to Buyer. *Id.* at ¶ 15.

6 **A. Additional Relief**

7 Pursuant to its broad equitable powers with respect to the administration of  
8 receivership assets, the Receiver requests that the Court authorize payment from the  
9 proceeds of sale of the Fairview Condominium, the valid liens,<sup>3</sup> taxes, and any other  
10 claims on the property, subject to any objections to such liens, taxes, or claims by  
11 the Receiver.

12 Finally, the Receiver requests authority to pay Broker a commission in the  
13 amount of 5% of the final purchase price. Based on his experience in real estate  
14 transactions and consultation with Broker and counsel, the Receiver believes that  
15 such commission is commercially reasonable and consistent with real estate industry  
16 standards. *Id.* at 16.

17 **VI. CONCLUSION**

18 For the reasons set forth herein, the Receiver respectfully requests entry of an  
19 Order approving and authorizing: (1) sale of the Fairview Condominium to Buyer,  
20 and (2) payment of 5% in commission to Broker from the sale proceeds.

21 Dated: March 17, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS A. SEAMAN

28 <sup>3</sup> The Receiver is not aware of any valid liens on the Property, which was  
purchased with all cash.