

1 DAVID R. ZARO (BAR NO. 124334)
2 TIM C. HSU (BAR NO. 279208)
3 ALLEN MATKINS LECK GAMBLE
4 MALLORY & NATSIS LLP
5 865 South Figueroa Street, Suite 2800
6 Los Angeles, California 90017-2543
7 Phone: (213) 622-5555
8 Fax: (213) 620-8816
9 E-Mail: dzaro@allenmatkins.com
10 thsu@allenmatkins.com

11 EDWARD G. FATES (BAR NO. 227809)
12 ALLEN MATKINS LECK GAMBLE
13 MALLORY & NATSIS LLP
14 One America Plaza
15 600 West Broadway, 27th Floor
16 San Diego, California 92101-0903
17 Phone: (619) 233-1155
18 Fax: (619) 233-1158
19 E-Mail: tfates@allenmatkins.com

20 Attorneys for Receiver
21 THOMAS SEAMAN

22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA
24 WESTERN DIVISION

25 SECURITIES AND EXCHANGE
26 COMMISSION,

27 Plaintiff,

28 v.

29 STEVE CHEN, USFIA, INC.,
30 ALLIANCE FINANCIAL GROUP,
31 INC., AMAUCTION, INC., ABORELL
32 MGMT I, LLC, ABORELL ADVISORS
33 I, LLC, ABORELL REIT II, LLC,
34 AHOME REAL ESTATE, LLC,
35 ALLIANCE NGN, INC., APOLLO RIET
36 I, INC., APOLLO REIT II, LLC,
37 AMKEY, INC., US CHINA
38 CONSULTATION ASSOCIATION, and
39 QUAIL RANCH GOLF COURSE, LLC,

40 Defendants.

Case No. 2:15-cv-07425 RGK (PLAx)
ASSIGNED FOR ALL PURPOSES TO
Judge R. Gary Klausner

**NOTICE OF MOTION AND
MOTION FOR AUTHORITY TO
PURSUE CLAIMS AGAINST WEI
HE, THE WEI HE TRUST DATED
JULY 1, 2005, AHOMELAND, INC.,
AND GOLDEN ARK, INC.**

Date: November 20, 2017
Time: 9:00 a.m.
Ctrm: 850

Complaint Filed: September 28, 2015

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on November 20, 2017, at 9:00 a.m. in
3 Courtroom 850 of the above-entitled Court, located at 255 E. Temple Street, Los
4 Angeles, California 90012, Thomas Seaman ("Receiver"), the Court-appointed
5 permanent receiver for Defendants USFIA, Inc., Alliance Financial Group, Inc.,
6 Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell
7 REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc.,
8 Apollo REIT II, LLC, Amkey, Inc., US China Consultation Association, Quail
9 Ranch Golf Course, LLC, and their subsidiaries and affiliates (collectively,
10 "Receivership Entities"), will and hereby does move the Court for authority to
11 pursue claims against Wei He, the Wei He Trust dated July 1, 2005, Ahomeland,
12 LLC, Golden Ark, Inc., and any other persons or entities related to or affiliated with
13 Wei He who received improper transfers from the Receivership Entities.

14 The Motion is based on this Notice of Motion and Motion, the attached
15 Memorandum of Points and Authorities, the Declarations of Thomas Seaman and
16 Tim C. Hsu, the documents and pleadings already on file in this action, and upon
17 such further oral and documentary evidence as may be presented at the time of the
18 hearing.

19 **Procedural Requirements:** If you oppose this Motion, you are required to
20 file your written opposition with the Office of the Clerk, United States District
21 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same
22 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks authority for Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates (collectively, "Receivership Entities"), to pursue fraudulent transfer and disgorgement claims against Defendant Steve Chen's ex-wife, Wei He, her trust, the Wei He Trust dated July 1, 2005 (the "Wei He Trust"), her companies Ahomeland, Inc. ("Ahomeland") and Golden Ark, Inc. ("Golden Ark"), and any other persons or entities determined to be related to or affiliated with Wei He who received transfers, directly or indirectly, from the Receivership Entities.

Wei He, the Wei He Trust, and her companies, Ahomeland and Golden Ark ("Wei He Parties") collectively received, or are presently holding title to, two residential real properties that were purchased with funds from the Receivership Entities in excess of \$5.3 million. These include the property located at 5088 Scholarship, Irvine, CA (the "Scholarship Property"), purchased for approximately \$950,000, of which \$910,000 was paid by directly by the Receivership Entity Ahome Real Estate, LLC ("Ahome"), and the property located at 363 Monterey Pines Drive, Arcadia, CA (the "Monterey Pines Property"), which was purchased for approximately \$4.4 million and funded almost entirely by Receivership Entity Amkey, Inc. ("Amkey"). The Scholarship Property and the Monterey Pines Property are together referred to herein as the "Properties"

In addition to the Properties, the Wei He Parties received or were the beneficiaries of various payments made by the Receivership Entities. These

1 payments were paid directly to Wei He, her companies, or to third parties on her
2 behalf and for her benefit, totaling in excess of \$1 million.

3 Based on the Receiver's investigation, the Receivership Entities do not appear
4 to have received any value in exchange for the Properties, nor are there any records
5 indicating any legitimate business reasons for the monies paid to Wei He or to third
6 parties for her benefit. In short, the Wei He Parties obtained title to the Properties,
7 which were paid for with money from the Receivership Entities, and received the
8 benefit of over \$1 million in receivership funds, but the Receivership Entities appear
9 to have received no value in exchange.

10 Accordingly, the Receiver seeks authority to pursue claims against the Wei
11 He Parties to recover title to the Properties, the monies paid to Wei He or to third
12 parties on her behalf, and any other assets she may have received from the
13 Receivership Entities for which no value was provided in exchange. Because the
14 Receiver's investigation and accounting of the transactions involving Wei He is
15 ongoing, and because it appears there may be additional money and assets Wei He
16 may have received, either directly or through other entities she may own or control,
17 the Receiver plans to file his complaint within 60 days from entry of the Court's
18 Order approving this Motion such that he can complete his investigation.

19 The Receiver further requests that the Court accept the action to be filed
20 against the Wei He Parties as a related action to this action. This Court is familiar
21 with the facts and circumstances of this action and the fraudulent scheme
22 perpetrated by Steve Chen and the Entity Defendants. The Court's familiarity with
23 his background will conserve judicial resources and assist in the efficient resolution
24 of the claims against the Wei He Parties.

25 **II. RELEVANT FACTS**

26 **A. The Scholarship and Monterey Pines Properties.**

27 The Scholarship Property was purchased in November 2014 for
28 approximately \$950,000. *See* Declaration of Thomas Seaman ("Seaman Decl."),

1 ¶¶ 3-4, Ex. 1. As reflected in the escrow closing documents for this purchase, at
 2 least \$910,000 of the funding for the purchase was paid directly by Ahome to
 3 escrow to fund the purchase. *Id.* However, title to the property was taken in the
 4 name of Wei He's company, Ahomeland, by way of grant deed dated November 3,
 5 2014, and title was then subsequently transferred to Wei He's other company,
 6 Golden Ark in or around September 2015 (a little over a week before this
 7 enforcement action was commenced). *Id.*

8 The Monterey Pines Property was purchased in June 2015 for approximately
 9 \$4.4 million. *Id.* at ¶ 5, Ex 2. Funding for this purchase came entirely from Amkey,
 10 as reflected in escrow deposit receipts, wire transfer details, and cleared checks,
 11 which show Amkey paid escrow a total of \$4,425,000 for the purchase of the
 12 property. *Id.* However, title to the property was taken in the name of Wei He, as
 13 Trustee of the Wei He Trust dated July 1, 2005. *Id.*

14 **B. The Receivership Entities Paid In Excess of \$1 Million to Wei He**
 15 **or to Third Parties for Her Benefit.**

16 In addition to the Properties, in excess of \$1 million was paid by the
 17 Receivership Entities either directly to Wei He and her companies, or to third parties
 18 on her behalf and for her benefit. *Id.* at ¶ 6. These payments were made over the
 19 course of years and appear to have been used to pay for, among other things, Wei
 20 He's debit card, where she appears to have accrued thousands or tens of thousands of
 21 dollars in charges on a monthly basis, furniture and other expenditures for the
 22 Properties, thousands of dollars in artwork, and various other charges. *Id.*

23 Based on the Receiver's review of the Receivership Entities' books and
 24 records, there do not appear to have been any legitimate business transactions
 25 underlying these payments, and the Receivership Entities did not appear to have
 26 received any value in exchange for these payments. *Id.* at ¶ 7. Instead, it appears
 27 Defendant Steve Chen simply used funds raised from investors to purchase the
 28 Properties for Wei He and pay her personal expenses. *Id.*

1 **A. The Receiver's Demands.**

2 Through his counsel, the Receiver has demanded the return of the Properties
3 and discussed the matter of other financial transactions involving Wei He with her
4 counsel. Declaration of Tim C. Hsu ("Hsu Decl."), ¶¶ 3-4. However, Wei He has
5 not agreed to turn over title of the Properties or return any funds. *Id.* Rather, Wei
6 He has demanded that she be allowed to pay the Receiver some undefined sum, and
7 keep the Properties, along with the benefit of any inherent increase in value since
8 the Properties were purchased. *Id.* Wei He has also contended that she is entitled to
9 setoff for monies held in certain accounts that were frozen and turned over by the
10 banks at the outset of this action. *Id.*

11 Notwithstanding her contentions, Wei He has provided no legal or factual
12 justification for retaining any increase in value in the Properties, nor has she
13 provided any documentary evidence to show she is entitled to a setoff. *Id.*

14 While the Receiver is continuing to investigate additional transactions
15 involving Wei He and other entities she may own or control, based on the
16 information and evidence gathered thus far, the Receiver believes there are strong
17 fraudulent transfer and disgorgement claims against the Wei He Parties for recovery
18 of the Properties and funds they received. Accordingly, the Receiver respectfully
19 requests the Court grant him authority to bring a separate action to pursue claims
20 against the Wei He Parties to recover the Properties and monies paid to Wei He or
21 for her benefit, so that such assets and funds may be recovered for the benefit of the
22 receivership estate. The Receiver further requests that the Court accept the ancillary
23 action against the Wei He Parties as a related action in order to conserve judicial and
24 receivership estate resources.

25 **III. ARGUMENT**

26 "The power of a district court to impose a receivership or grant other forms of
27 ancillary relief does not in the first instance depend on a statutory grant of power
28 from the securities laws. Rather, the authority derives from the inherent power of a

1 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
2 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
3 and efficient administration of the estate by the district court for the benefit of
4 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
5 of a receiver is authorized by the broad equitable powers of the court, any
6 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
7 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

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

23 Here, this Court has empowered the Receiver to, among other things, "to
24 employ attorneys, accountants, and other to investigate and, where appropriate, to
25 institute, pursue, and prosecute all claims and causes of action ... which may now or
26 hereafter exist as a result of the activities of ... the Entity Defendants and their
27 subsidiaries and affiliates...." *See* Dkt. No. 13, p. 13. Based on the circumstances
28 described herein, the Receiver believes it is appropriate to pursue claims against the

1 Wei He Parties to recover assets and funds they received from the Receivership
2 Entities for the benefit of the receivership estate, and thus respectfully requests the
3 Court grant him authority to do so.

4 **A. The Properties Wei He Purchased and the Funds She Received Are**
5 **Subject To Disgorgement.**

6 Under California's Uniform Fraudulent Transfer Act ("CUFTA"), Cal. Civ.
7 Code § 3439 *et seq.*, a transfer is subject to avoidance and recovery when made
8 with (1) actual intent to defraud, or (2) constructive fraudulent intent based on the
9 lack of reasonably equivalent value provided in exchange. Cal. Civ. Code
10 § 3439.04(a). Intent to defraud is presumed when the payments were made from
11 entities operating a Ponzi scheme. *In re Cohen*, 199 B.R. 709,717 (B.A.P. 9th Cir.
12 1996); *see also Donell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2007); *In re AFI*
13 *Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008). Federal equity receivers have
14 standing to pursue fraudulent transfer claims on behalf of entities in receivership.
15 *Donell*, 533 F.3d at 776-777.

16 Here, the Wei He Parties received, either directly or indirectly, title to the
17 Properties and in excess of at least \$1 million from the Receivership Entities without
18 providing any value in return. Title to the Properties was taken by the Wei He
19 Parties, but they paid little to no money for the Properties and the purchases were
20 funded almost entirely by Receivership Entities Ahome and Amkey. In addition to
21 the Properties, the Receivership Entities paid to Wei He, or to third parties for her
22 benefit, in excess of \$1 million. These payments do not appear to have been made
23 for any legitimate business purposes, and the Receivership Entities do not appear
24 have received any value in exchange for these payments.

25 While Wei He has claimed entitlement to the benefits of any increase in value
26 of the Properties and further claimed an unspecified right to setoff, the Receiver
27 does not believe that any legal or factual basis exists that would justify her demands,
28 nor has Wei He provided any documentary evidence to support her contentions.

1 Accordingly, based on the evidence the Receiver has obtained and reviewed, and
2 further evidence that may be developed in discovery concerning the fraudulent
3 nature of these transactions, the Receiver believes meritorious claims exists against
4 the Wei He Parties for fraudulent transfer, which claims are supported by the
5 substantial evidence the Receiver has already uncovered. The Receiver further
6 believes that additional information supporting such claims will likely be found
7 through discovery and thus respectfully requests this Court exercise its broad
8 equitable discretion and authorize the Receiver to file a separate action to pursue
9 such claims.

10 **B. The Receiver Will Endeavor to Keep Costs to a Minimum and**
11 **Continue to Evaluate the Likely Benefit to the Receivership Estate.**

12 The Receiver has consulted with his counsel, Allen Matkins, and believes the
13 legal fees for the action could be as low as \$15,000 in the event of a prompt
14 settlement, and as much as \$250,000 in the event of a full trial. *See* Seaman Decl.,
15 ¶ 8. The Receiver believes a full trial is highly unlikely and the case will likely be
16 resolved via settlement or summary judgment with legal fees of \$100,000 or less.
17 *Id.* As with all matters, the Receiver and Allen Matkins will make every effort to
18 minimize administrative expenses associated with the proposed action. *Id.*

19 Throughout the litigation, the Receiver and Allen Matkins will continue to
20 monitor the costs and likely net benefit to the receivership estate. *Id.* at ¶ 9. In his
21 discretion, the Receiver may conduct asset investigations to aid in assessing
22 collectability of a judgment. *Id.* Notices of this receivership have already been
23 recorded against the Properties, which significantly reduces the likelihood that these
24 assets (which likely have a combined value in excess of \$5.5 million) could be
25 liquidated or encumbered to avoid a judgment being enforced against them. *Id.*

26 After reviewing the available evidence, weighing the merits of the proposed
27 claims against the Wei He Parties, and assessing the anticipated costs of litigation
28 and likelihood of success and collectability, the Receiver believes, in his reasonable

1 business judgment, that it is in the best interest of the receivership estate to pursue
2 such claims, and respectfully requests the Court issue an order authorizing him to do
3 so. *Id.* at ¶ 10.

4 Finally, because the Receiver's investigation and accounting of the
5 transactions involving Wei He remains ongoing, and because it appears there may
6 be other money and assets Wei He may have received, either directly or through
7 other entities she may own or control, the Receiver plans to file his complaint within
8 60 days from entry of the Court's Order approving this Motion. *Id.* at ¶ 11. During
9 this additional time, the Receiver intends to obtain additional bank records,
10 determine whether additional persons or entities should be named as defendants, and
11 complete his analysis of potential claims. *Id.*

12 **IV. CONCLUSION**

13 Based on the foregoing, the Receiver respectfully requests an order
14 authorizing him to pursue fraudulent transfer and disgorgement claims against the
15 Wei He Parties and similar claims against any other individuals or entities related to
16 or affiliated with Wei He who received transfers, directly or indirectly, from the
17 Receivership Entities.

18
19 Dated: October 17, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

20
21
22 By: /s/ Tim C. Hsu

TIM C. HSU
Attorneys for Receiver
THOMAS SEAMAN