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12 THOMAS A. SEAMAN

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

16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 vs.

19 STEVE CHEN, USFIA, INC.,  
20 ALLIANCE FINANCIAL  
GROUP, INC., AMAUCTION, INC.,  
21 ABORELL MGMT I, LLC, ABORELL  
ADVISORS I, LLC, ABORELL  
22 REIT II, LLC, AHOME REAL  
ESTATE, LLC, ALLIANCE  
23 NGN, INC., APOLLO REIT I, INC.,  
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 MOTION AND  
MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT  
WITH LI ZHAO, YANHONG WU  
AND QI CHEN; MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date: December 31, 2018  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 31, 2018, at 9:00 a.m. in  
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street, Los  
4 Angeles, CA 90012, Thomas A. Seaman ("Receiver"), the Court-appointed  
5 permanent receiver for USFIA, Inc., Alliance Financial Group, Inc., Amauction,  
6 Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome  
7 Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,  
8 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,  
9 and their subsidiaries and affiliates ("Receivership Entities"), will and hereby does  
10 move the Court for an order approving the settlement agreement with Li Zhao,  
11 Yanhong Wu and Qi Chen ("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 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 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, CA 90012, and serve the same on the  
19 undersigned not later than 21 days prior to the hearing.

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

23  
24 Dated: November 28, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates

EDWARD G. FATES  
Attorneys for Receiver  
WILLIAM J. HOFFMAN

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Receiver seeks approval of a settlement with Li Zhao, aka Jennifer Zhao ("Zhao"), as well as Yanhong Wu and Qi Chen, two people located in China who Zhao claims invested in Receivership Entity Ally Investors, LLC ("Ally Investors"). The proposed settlement resolves claims Zhao, Yanhong Wu and Qi Chen ("Ally Claimants") have asserted regarding the ownership of funds held in Ally Investors' accounts at Bank of America, as well as a safety deposit box. The settlement also resolves the Receiver's claims against Zhao for recovery of potentially fraudulent transfers made to Zhao by the Receivership Entities.

Under the settlement agreement, the Receiver and the Ally Claimants release the claims listed above against each another. The Receiver retains the approximately \$3.2 million in disputed funds that were in the Ally Investors' accounts at the time of the Receiver's appointment. The Ally Claimants retain the right to submit investor claims through the Court-approved claims process to be reviewed and treated like all other investor claims. The Receiver believes the proposed settlement, which (a) eliminates the Ally Claimants' claims that approximately \$3.2 million held by the Receiver belongs to them outright, and (b) avoids costly fraudulent transfer litigation with Zhao with an uncertain recovery, is in the best interests of the receivership estate.

**II. BACKGROUND FACTS**

On September 28, 2015, the Securities and Exchange Commission ("Commission") filed its Complaint against Defendants Steve Chen, 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. Dkt. No. 3. Concurrently with filing the Complaint, the Commission filed an Ex Parte

1 Application for a Temporary Restraining Order ("TRO" ), including the  
2 appointment of a temporary receiver for the Receivership Entities. Dkt. No. 1.

3 The District Court granted the Ex Parte Application and entered the TRO on  
4 September 28, 2015, including appointment of the Receiver on a temporary basis.  
5 Dkt. No. 8. On October 6, 2015, the Court entered a Preliminary Injunction Order  
6 ("PI Order"), making permanent the Receiver's appointment. Dkt. No. 13.

7 On November 23, 2015, Zhao filed a motion seeking to intervene in this  
8 action and asked the Court to unfreeze certain bank accounts and a safe deposit box  
9 at Bank of America. One account was in the name of David Chen (Zhao and  
10 Defendant Steve Chen's son) and three were in the name of Ally Investors. The safe  
11 deposit box was in Zhao's name. The accounts and the safe deposit box had been  
12 frozen when the Receiver provided the TRO and PI Order to Bank of America.  
13 Declaration of Thomas Seaman ("Seaman Decl."), ¶ 3.

14 The Receiver and the Commission opposed Zhao's motion. The Receiver  
15 argued that Ally Investors was an affiliate of Chen and the Receivership Entities and  
16 therefore was subject to the asset freeze and receivership pursuant to the TRO and  
17 PI Order. Zhao argued Ally Investors was unrelated to Chen and the Receivership  
18 Entities, conducted its own business, and was separately funded by Yanhong Wu  
19 and Qi Chen, who are located in China. Ally Investors' corporate and tax records  
20 identify Yanhong Wu and Qi Chen as members of Ally Investors. Seaman Decl.,  
21 ¶ 4.

22 In its order dated January 15, 2016 ("January 15, 2016 Order"), the Court  
23 allowed Zhao to intervene and ordered that the David Chen account be unfrozen.  
24 Dkt. No. 38. The Court, however, found that Zhao and Ally Investors are affiliates  
25 of Chen and the Receivership Entities, and therefore declined to unfreeze the  
26 remaining accounts or the safe deposit box. *Id.*

27 Through his investigation, the Receiver discovered that the Receivership  
28 Entities made certain transfers to Zhao and to third parties for her benefit. The

1 Receiver believes some of these transfers are recoverable from Zhao under the  
2 California Uniform Voidable Transactions Act, and therefore sought authority from  
3 the Court to pursue an action against Zhao to recover the applicable transfers. The  
4 total in potentially fraudulent transfers to Zhao is just over \$370,000. Seaman Decl.,  
5 ¶ 4. Such authority was granted on August 7, 2018. Dkt. No. 325. The Receiver  
6 filed a separate action against Zhao on August 16, 2018. Case No. 18-CV-7094.

### 7 III. PROPOSED SETTLEMENT TERMS

8 The Receiver and the Ally Claimants entered into a settlement agreement  
9 ("Settlement Agreement"), subject to Court approval, pursuant to which the Ally  
10 Claimants release all claims that the funds contained in Ally Investors' accounts and  
11 the safety deposit box are unrelated to the fraudulent scheme and therefore should  
12 be returned to them in full. In return, the Receiver releases all claims against Zhao  
13 for recovery of potentially fraudulent transfers made to her. The Ally Claimants  
14 retain the right to submit claims to the Receiver and have those claims reviewed and  
15 treated in the same manner as other investor claims. A true and correct copy of the  
16 Settlement Agreement is attached as Exhibit A to the Seaman Decl. filed  
17 concurrently herewith. Seaman Decl., ¶ 5.

### 18 IV. DISCUSSION

19 A federal equity receiver's power to compromise claims is subject to court  
20 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*,  
21 803 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an  
22 equity receivership and to determine the appropriate action to be taken in the  
23 administration of the receivership is extremely broad." With regard to settlements  
24 entered into by a federal equity receiver, the Court's supervisory role includes  
25 reviewing and approving those settlements in light of federal court policy to  
26 promote settlements before trial. See Fed. R. Civ. P. 16(c), Advisory Committee  
27 Notes.

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1 Federal courts of equity often look to bankruptcy law for guidance in the  
2 administration of receivership estates. See *SEC v. Capital Consultants, LLC*,  
3 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*,  
4 98 F.3d 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*,  
5 273 F.3d 657, 665 (6th Cir. 2001); see also Local Civil Rule 66-8 ("a receiver shall  
6 administer the estate as nearly as possible in accordance with the practice in the  
7 administration of estates in bankruptcy"). A bankruptcy court may approve a  
8 compromise of claims asserted by or against the estate if the compromise is "fair  
9 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*,  
10 839 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise  
11 negotiated by a court appointed fiduciary "is an exercise of discretion that should  
12 not be overturned except in cases of abuse leading to a result that is neither in the  
13 best interest of the estate nor fair and equitable for the creditors." *In re MGS*  
14 *Marketing*, 111 B.R. 264, 266 67 (B.A.P. 9th Cir. 1990).

15 The Court has great latitude in approving compromises. In passing on the  
16 proposed compromise, the Court should consider the following:

- 17 a. The probability of success in litigation;
- 18 b. The difficulties, if any, to be encountered in the  
matter of collection;
- 19 c. The complexity of the litigation involved and the  
20 expense, inconvenience, and delay necessarily  
attending; and
- 21 d. The paramount interest of the creditors and a proper  
deference to their reasonable views in the premises.

22 *Woodson*, 839 F.2d at 620.

23 Here, the Receiver has weighed the costs and likely benefits of the various  
24 claims being released. With respect to the Ally Claimants' claims to the funds in the  
25 Ally Investors accounts and safety deposit box, approximately half of the funds  
26 were traced directly back to the receivership entities. There were significant tracing  
27 challenges regarding the other half, however, including that a substantial amount  
28 was sent to Ally Investors by money transfer agents located in China that have no

1 legal obligation to comply with a subpoena from this Court. The Ally Claimants  
2 claim they transferred these funds to Ally Investors (through the Chinese money  
3 transfer agents) and the funds are unrelated to the Defendants' fraudulent scheme.  
4 Although the Receiver believes he would ultimately be successful in defeating the  
5 Ally Claimants' claims to recover the funds, there is considerable cost and risk  
6 associated with the litigation. Seaman Decl., ¶ 6.

7 With respect to the Receiver's fraudulent transfer claim against Zhao, the  
8 Receiver is confident he would ultimately be successful in obtaining a judgment, but  
9 the amount of the judgment and the recovery is less certain. Zhao claimed some of  
10 the transfers to her were reimbursement for luxury items and gifts she purchased for  
11 investors. If determined to be true, this would reduce the amount of the judgment.  
12 Moreover, Zhao clearly has strong ties to China, so the ability to collect on a  
13 judgment with assets of Zhao located in the United States is uncertain and presents  
14 considerable risk. Seaman Decl., ¶ 7.

15 The Settlement Agreement avoids costly litigation and ensures that the  
16 approximately \$3.2 million in the Ally Investors accounts and safety deposit box  
17 will be distributed *pro rata* to all investors with losses from the Defendants'  
18 fraudulent scheme. Accordingly, the Receiver believes the Settlement Agreement is  
19 in the best interests of the receivership estate, and therefore asks that it be approved.  
20 Seaman Decl., ¶ 8.

## 21 V. CONCLUSION

22 Based on the foregoing, the Receiver requests an order approving the  
23 Settlement Agreement.

24  
25 Dated: November 28, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

26  
27 By:           /s/ Edward Fates          

EDWARD G. FATES  
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