

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

6 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
7 EDWARD G. FATES (BAR NO. 227809)
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
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 v.

19 STEVE CHEN, USFIA, INC.,
ALLIANCE FINANCIAL
20 GROUP, INC., AMAUCTION, INC.,
ABORELL MGMT I, LLC, ABORELL
21 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
22 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 (A) APPROVAL OF
SALE OF RANCHO CUCAMONGA
PROPERTY, AND (B) AUTHORITY
TO PAY BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 13, 2019
Time: 9:00 a.m.
Ctrm.: 850
Judge: Hon. R. Gary Klausner

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TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on May 13, 2019, at 9:00 a.m. in Courtroom 850 of the above-entitled Court, located at 255 East Temple Street, Los Angeles, California 90012-3332, 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, including Steamfont Investment Group, LLC (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of sale of the Rancho Cucamonga Property, and (B) authority to pay broker's commission ("Motion").

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman in support of Motion For (A) Approval of Sale of Rancho Cucamonga Property, and (B) Authority to Pay Broker's Commission, the documents and pleadings already on file in this action, and upon such further oral and documentary evidence as may be presented at the time of the hearing.

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

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

4
5 Dated: March 29, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

6
7 By: /s/ David R. Zaro

8 DAVID R. ZARO
9 Attorneys for Receiver
THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

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

13 Pursuant to the Appointment Orders, the Receiver took possession of all
14 assets of the Receivership Entities, including, but not limited to, the real property
15 located at 8281 Utica Avenue, Rancho Cucamonga, California (the "Property").
16 The Property is owned by Steamfont Investment Group LLC, one of the
17 Receivership Entities. Declaration of Thomas A. Seaman in Support of Motion For
18 (A) Approval of the Sale of the Rancho Cucamonga Property, and (B) Authority to
19 Pay Broker's Commission filed herewith ("Seaman Declaration."), ¶ 3.

20 The Property consists of a .72 acre parcel of raw land located in an
21 office/industrial business park in Rancho Cucamonga, California. The cost of
22 holding and maintaining the Property has entailed certain carrying costs to the
23 receivership estate, including costs for maintenance, insurance, and property taxes.
24 In June 2018, the Receiver listed the Property for sale through a licensed broker,
25 Howard Hamlin of Hamlin Gooding (the "Broker"). *Id.* at ¶ 5.

26 After consulting with the Broker, the Receiver listed the Property for sale at
27 \$1,000,000. In August, 2018, after several months passed without any meaningful
28 offers or expressions of interest, the listing price was lowered to \$600,000. *Id.* at

1 ¶ 6. The Property was listed on Costar, LoopNet, and the Multiple Listing Service –
2 three widely used internet listing services for commercial property. The Broker also
3 emailed the listing to over 1,070 known "land buyers" in Southern California. A
4 marketing package was prepared and made available to the land buyers and was
5 posted on Costar/LoopNet where the Property appeared in 92,903 searches. Of
6 these searches, 1,290 people opened the marketing package and this resulted in
7 25 inquiries.

8 The Receiver received four concrete offers. After negotiations with these
9 potential buyers, the Receiver ultimately reached an agreement on a purchase price
10 of \$550,000 with Kamran Akbar ("Buyer"). The Receiver and Buyer then entered
11 into a Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement"),
12 dated November 8, 2018. Seaman Declaration, Exhibit A. At the request of the
13 Buyer, and in consideration for the release to the Receiver of a portion of the
14 Buyer's earnest money deposit, the Receiver agreed to several extensions of Buyer's
15 Approval Notice and the Financing Contingency dates. These extensions and the
16 consideration were memorialized in the First Amendment, Second Amendment and
17 Third Amendment to the Agreement, which amendments are attached as Exhibit B
18 to the Seaman Declaration.

19 Among other things, the Agreement specifies the sale of the Property is
20 subject to Court approval and is on an "AS IS" basis. On March 11, 2019, the final
21 contingency was removed, the Buyer's Approval Notice became fully effective, and
22 the \$50,000 deposit became non-refundable. *Id.* at ¶7.

23 In his reasonable business judgment, the Receiver believes the Agreement,
24 obtained through the commercially reasonable and customary method of listing the
25 property with a licensed broker and after arm's length negotiations with Buyer,
26 reflects the fair market value of the Property. Moreover, the sale is subject to
27 overbid and public auction procedures discussed below. *Id.* at ¶ 8. Accordingly, the
28

1 Receiver respectfully requests this Court grant this Motion and approve and
2 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

3 **II. TERMS OF THE AGREEMENT**

4 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.
5 Its terms are summarized as follows:¹

6 **Court approval.** All aspects of the Agreement and the sale are subject to
7 approval by the Court.

8 **Purchase Price.** \$550,000.

9 **Closing Date.** Escrow to close within 15 days of Court approval of the sale.

10 **Deposit.** Buyers have deposited \$50,000 into escrow, refundable only if the
11 Court does not approve the sale to Buyer.

12 **As Is Purchase.** Buyer agrees to purchase the Property on an "AS IS" basis.

13 **Break-Up Fee.** In the event Buyer is outbid by a qualified overbidder at the
14 auction, it will be entitled to a break-up fee of \$7,500 to compensate it for the time
15 and expenses it has incurred in conducting due diligence on the Property.

16 **Broker's Commission.** By separate agreement, the Receiver has agreed,
17 subject to Court approval, to pay the Broker a commission of 10% of the final
18 purchase price.

19 **III. ARGUMENT**

20 "The power of a district court to impose a receivership or grant other forms of
21 ancillary relief does not in the first instance depend on a statutory grant of power
22 from the securities laws. Rather, the authority derives from the inherent power of a
23 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
24 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
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27 ¹ The terms of the Agreement are summarized herein for convenience only. In the
28 event of any conflict between the Agreement and the summary provided herein,
the Agreement governs and controls.

1 and efficient administration of the estate by the district court for the benefit of
2 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986).

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

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

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

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

24 **A. The Proposed Sale**

25 It is generally conceded that a court of equity having custody and control of
26 property has power to order a sale of the same in its discretion. See, e.g., *Elliott*,
27 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
28 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)
(citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.

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

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

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

22 **B. 28 U.S.C. § 2001**

23 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
24 real property by receivers under subsection (a) and specific requirements for private
25 sales of real property under subsection (b). Although both involve unnecessary cost
26 and delay, the cost and delay of a public sale are significantly less than those for a
27 private sale. *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal.
28 2013) ("Section 2001 sets out two possible courses of action: (1) property may be

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

5 Here, the proposed sale to Buyer or a qualified overbidder should be
6 approved. The Property has been fully and properly exposed to the market by
7 Broker through the customary means of listing the property on LoopNet, Costar, and
8 the Multiple Listing Service ("MLS"), advertising, and sending marketing materials
9 to known land purchasers. The Receiver believes the proposed sale represents the
10 fair market value and will generate the highest and best recovery from the Property.
11 Seaman Decl., ¶ 9.

12 Moreover, the proposed sale is subject to overbid and public auction. The
13 Receiver proposes to conduct a public auction consistent with the requirements of
14 Section 2001(a). Specifically, the Receiver will publish the following notice of the
15 sale once a week for four weeks in the San Gabriel Valley Tribune:

16 In the action pending in U.S. District Court for the Central
17 District of California, Case No. 16-CV-07425-RGK-PLA,
18 Securities and Exchange Commission v. Steve Chen et al.,
19 notice is hereby given that the court-appointed receiver will
20 conduct a public auction for the commercial real property
21 located at 8281 Utica Avenue, Rancho Cucamonga, California.
22 Sale is subject to Court confirmation after the auction is held.
23 Minimum bid price is \$580,000. The auction will take place on
24 May 13, 2019, at 11:00 a.m. at the property located at 8281
25 Utica Avenue, Rancho Cucamonga, California. To be allowed
26 to participate in the auction, prospective purchasers must meet
27 certain bid qualification requirements, including submitting a
28 signed purchase and sale agreement, an earnest money deposit
of \$50,000, and proof of funds. All bidders must be qualified
by 3:00 p.m. PT on May 3, 2019, by submitting the required
materials to the Thomas Seaman Company at 3 Park Plaza,
Suite 550, Irvine California, 92614. If interested in qualifying
as a bidder, please contact Howard Hamlin at
howard@hamlingooding.com.

26 *Id.* at ¶ 10.

27 In order to conduct an orderly auction and provide sufficient time for the
28 publication of notices discussed above, the Receiver will require bidders to complete

1 the above steps by May 3, 2019 ("Bid Qualification Deadline"), and conduct the live
2 public auction at the Property at 11:00 a.m. on May 13, 2019. *Id.* at ¶ 11.

3 The Receiver will inform all interested persons of the opportunity to overbid
4 at the public auction, provided they qualify themselves to bid by the Bid
5 Qualification Deadline by (a) signing a non-contingent purchase and sale agreement
6 for the properties on the same terms and conditions as Buyer, but with a purchase
7 price of at least \$580,000, (b) providing the Receiver with an earnest money deposit
8 of \$50,000, and (c) providing proof of funds necessary to close the sale transaction
9 in the form of a current bank statement, cashier's check delivered to the Receiver, or
10 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 12.

11 In the event one or more prospective purchasers qualify themselves to bid, the
12 Receiver will promptly notify the Court and the auction will be conducted at the
13 Property as noted above. After meeting the initial overbid requirement, bids will be
14 allowed in increments of \$10,000. The Receiver will then file a notice advising the
15 Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
16 confirming the sale. Earnest money deposits provided by bidders who are
17 unsuccessful will be promptly returned to them. In the event no prospective
18 purchasers qualify themselves to bid by the Bid Qualification Deadline, the Receiver
19 will notify the Court and seek entry of an order approving the sale to Buyer. *Id.* at
20 ¶ 13.

21 **A. Additional Relief**

22 Pursuant to its broad equitable powers with respect to the administration of
23 receivership assets, the Receiver requests the Court authorize payment from the
24 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
25 on the property, subject to any objections to such liens, taxes, or claims by the
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28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.

1 Receiver. The Receiver notes that the Property is owned free and clear of debt. The
2 net proceeds of the sale are expected to be approximately \$485,000.

3 Finally, the Receiver requests authority to pay Broker a commission in the
4 amount of 10% of the final purchase price. Based on his extensive experience in
5 real estate transactions, the Receiver believes that such commission is commercially
6 reasonable and consistent with real estate industry standards. Broker has invested
7 substantial time into preparing the Property for sale, locating potential purchasers,
8 marketing the property to them, negotiating terms, and assisting in preparing sale
9 documents. *Id.* at ¶ 14.

10 **V. CONCLUSION**

11 For the reasons set forth herein, the Receiver respectfully requests entry of an
12 Order approving and authorizing: (1) sale of the Property to Buyer [or the successful
13 overbidder], and (2) payment of a commission of 10% of the purchase price to
14 Broker from the sale proceeds.

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16 Dated: March 29, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ David R. Zaro

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DAVID R. ZARO
Attorneys for Receiver
THOMAS A. SEAMAN

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