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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 v.

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

25 Defendants.
26

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO APPROVE:
(1) RECEIVER'S
RECOMMENDATIONS AS TO
ALLOWED CLAIMS; (2) RECEIVER'S
RECOMMENDATIONS AS TO
DISPUTED CLAIMS;
(3) AUTHORIZATION TO LIMIT
SCOPE OF RECEIVERSHIP TO
IDENTIFIED RECEIVERSHIP
ENTITIES; AND (4) DISTRIBUTION
PLAN**

Date: February 1, 2021
Time: 9:00 a.m.
Ctrm: 850
Judge Hon. R. Gary Klausner

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1 **I. INTRODUCTION.**

2 Thomas A. Seaman, the Court-appointed permanent receiver (“Receiver”) for
3 Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell
4 Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real Estate, LLC,
5 Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China
6 Consultation Association, Quail Ranch Golf Course, LLC, and their subsidiaries and
7 affiliates (collectively, “Receivership Entities”),¹ hereby submits this Memorandum of
8 Points and Authorities in Support of the Motion to Approve (1) Receiver’s
9 Recommendations as to Allowed Claims; (2) Receiver’s Recommendations as to Disputed
10 Claims; (3) Authorization to Limit Scope of Receivership to Identified Receivership
11 Entities; and (4) Distribution Plan (the “Claims Allowance Motion” or “Motion”).

12 On September 28, 2015, the Receiver was appointed as the federal equity receiver
13 for the Receivership Entities pursuant to the Temporary Restraining Order (the “TRO” or
14 “Appointment Order”). The Receiver’s appointment was made permanent upon the entry
15 of the Preliminary Injunction. Dkt. 14. On March 13, 2017, the Court entered a Final
16 Judgment as to Defendant Steve Chen. Dkt. 210. On March 17, 2017, the Court entered
17 an Amended Final Judgment as to the Receivership Entities. Dkt. 219. Since his
18 appointment, the Receiver has concluded monetization of all but a few of the Receivership
19 Entities’ assets. In doing so, the Receiver has recovered over \$65 million for the benefit of
20 investors and claimants as discussed herein.

21 On January 29, 2018, the Receiver filed the Motion for Order: (1) Setting Claims
22 Bar Date; (2) Approving Claims Forms; (3) Approving Claims Process; and (4) Approving
23 Engagement of Third Party Claims Analysts (“Claims Process Motion”). [Doc. No. 299.]
24 On March 7, 2018, the Court entered an order approving the claims process (“Claims
25 Process Order”) and an order setting a claims bar date of June 29, 2018. [Doc. Nos. 307,

26
27 ¹ As discussed below, there are numerous overseas entities with names similar to those of the
28 ones named herein which may have received funds from Receivership Entities. The Receiver
has no control over those entities, does not believe they are Receivership Entities and, among
other things, he will not file tax returns on their behalf.

1 308.] The claims bar date was extended twice in an effort to reach more victims, many of
2 whom live abroad and do not speak English. Notwithstanding these extensions of the bar
3 date, the Receiver has accepted and processed claims received from investors after the bar
4 date and asks the Court to allow certain of these late-filed claims.

5 The Receiver has completed his evaluation and processing of claims and by this
6 Motion seeks approval of his recommendations to allow and disallow claims as reflected
7 on Exhibits A through D, attached to the Declaration of Thomas A. Seaman (“Seaman
8 Declaration” or “Seaman Decl.”), filed herewith. In order to facilitate the filing of tax
9 returns and distribution of receivership proceeds, the Receiver also requests authority to
10 limit the scope of the receivership to those 11 Receivership Entities set forth in Section III
11 below. As explained below, by limiting and clarifying the scope of the Receivership
12 Entities, the Receiver will be in a position to file tax returns and seek a determination from
13 the taxing authorities for pre- and post-receivership tax liabilities, if any, and distribute the
14 available funds to investors.

15 The Receiver also requests that the Court approve the Receiver’s Distribution Plan
16 which provides the proposed methodology for distributing the estimated \$65 million to
17 those Claimants² with Allowed Claims. The Receiver’s Distribution Plan is attached
18 hereto as Exhibit E and incorporated herein by this reference.

19 **II. CLAIMS ALLOWANCE PROCESS.**

20 **A. The Claims Process.**

21 In accordance with the Claims Process Order, the Receiver sent claim forms to
22 investors and other claimants and established the online portal to allow for electronic
23 submission of claims. Seaman Decl. ¶ 6. Investors and other known claimants were
24 provided with detailed instructions, an explanation of the claims process and a full
25 opportunity to submit claims, either electronically or by mailing a hard copy of their claim
26 form. Id. With the several extensions of the Bar Date, claimants were given well over a
27

28 ² Initial capitalized words such as “Claimant” and “Allowed Claim,” that are not specifically defined herein, shall have the definition set forth in the Receiver’s Distribution Plan.

1 year to submit their claim forms, along with copies of all documents they believe support
2 their claim calculation or other basis for their claim. The Receiver and his staff carefully
3 reviewed the claims and communicated directly with the claimants, with the goal of
4 resolving as many disputes as possible.

5 As reported to the Court, the claims process, including but not limited to evaluation
6 of claims, has been extraordinary. The processing of claims was complicated by a variety
7 of issues, including the large volume of claims, the location of claimants around the world,
8 language barriers, payment and redemption of bonuses in Gemcoin, currency differences,
9 and the incomplete and unreliable books and records of the Receivership Entities. Seaman
10 Decl. ¶ 7.

11 Once the Receiver located investors, he had to convince many of the overseas
12 investors that it was safe for them to submit their claims. Specifically, there were over
13 7,000 overseas investors and many of these investors were apparently reticent to submit
14 claims and/or provide the backup information necessary to support their claims, out of
15 concerns that their actions would give rise to some government action (either in the U.S. or
16 China). After significant outreach efforts, including directed emails and telephone calls,
17 and an in-person meeting in a hotel ballroom that investors in the Los Angeles area could
18 attend, at which the Receiver and his staff addressed concerns of investors and assisted
19 investors with filing claims, the Receiver was able to convince more people to submit
20 claims. Ultimately the Receiver received claims from approximately 8,500 claimants. The
21 Receiver followed up with those claimants with disputed or unsubstantiated claims.

22 Seaman Decl. ¶ 8.

23 **B. Preliminary Processing And Determination of Allowed and Disallowed**
24 **Claims.**

25 As is customary in securities fraud cases such as this, the Receiver's claims' review
26 focused on establishing the principal amount of each investor's claim, without regard to
27 interest, consequential damages or profits that may have been lost. To calculate the
28 proposed allowed amount of each claim, the Receiver considered the net harm to each

1 claimant as determined on a money-in/money-out (or “MIMO”) basis. In other words, the
2 Receiver netted the amount of cash invested by each investor claimant and the amount of
3 cash distributions, including commission, distributions and refunds, paid out to the investor
4 claimant. Non-investor claims (*i.e.* trade or vender claims) were evaluated to determine
5 the actual value of pre-receivership goods or services provided to the Receivership
6 Entities, rather than claims for contract or consequential damages.

7 In order to validate the MIMO calculation for each investor’s claim, the Receiver
8 reconciled the investor’s stated claim amount with the Receiver’s forensic accounting and
9 the so-called “back office database” which was created and maintained by the
10 Receivership Entities. Seaman Decl. ¶ 11. The “back office database” was a database
11 maintained by the Receivership Entities as a proprietary database comprised of an investor
12 portal that investors could view and a so-called back office system which theoretically was
13 used to administer the transfer of payments to and from investors. Id. The back office
14 database had limitations in that it was not linked to the enterprise accounting system for
15 the Receivership Entities and it was not always apparent whether, for example, payments
16 or disbursements posted in the system for so-called “Gemcoins” were actual cash
17 transactions or simply fictitious bonus redemptions in which no funds were transferred in
18 or out of the enterprise. Id.

19 Investors were assigned a unique member identification number (“Member ID”) in
20 the back office system. In an effort to automate the claims review process and reduce
21 costs by using the back office database, the Claim Form requested the Claimant’s
22 Member ID. Unfortunately, many investors omitted their Member ID, while others
23 provided incorrect Member ID numbers or provided the Member ID in attachments, but
24 not in the Member ID field.

25 As part of his work to validate claims, the Receiver exported data from the back
26 office database in an effort to match the investor claims to the existing company data.
27 Seaman Decl. ¶ 12. The majority of allowed USFIA claims were verified in this manner.
28 For those investors who used the correct unique Member ID, the Receiver was able to

1 confirm the claim with the back office database and therefore recommends the claim be
 2 allowed. For those investors who did not provide a correct Member ID, the Receiver
 3 manually reviewed the claim to determine whether it should be recommended for
 4 allowance or disallowance. All of this work was necessary to verify claim amounts and
 5 ensure no false or duplicate claims are recommended for allowance.

6 The results of this work is reflected in the Receiver’s recommendations to allow and
 7 disallow claims set forth on Exhibits A – D to the Seaman Declaration. As previously
 8 noted, the Receiver requests the Court approve his recommendations as reflected in
 9 Exhibits A – D.

10 **C. Allowed Claims Overview.**

11 The Receiver processed nearly 8,500 claims with a total face value of
 12 approximately \$135.1 million. The Receiver recommends that the Court allow claims of
 13 approximately \$80.7 million and recommends that the Court disallow claims of
 14 approximately \$54.4 million. (See, Seaman Declaration, Exhibits A – D.) The Receiver’s
 15 recommendations regarding the overall treatment of claims are summarized by entity as
 16 follows (in \$ millions):

17 <u>Entity or type of claim</u>	<u>Total</u>	<u>Allowed</u>	<u>Disallowed</u>
18 USFIA	\$61.5	\$45.5	\$16.0
19 Amkey/Vecast	\$40.4	\$27	\$13.4
20 Ally Investors	\$4.0	\$0.0	\$4.0
21 Apollo REIT	\$12.2	\$7.9	\$4.3
22 Employees	\$0.1	\$0.1	\$0.0
23 Vendors/Creditors	\$5.8	\$0.2	\$5.6
24 <u>Duplicate claims</u>	<u>\$11.1</u>	<u>\$0.0</u>	<u>\$11.1</u>
25 Total	\$135.1	\$80.7	\$54.4

26 Exhibit A provides a listing of recommended USFIA Investor Claims showing the
 27 amount of each claim, the Receiver’s recommended Allowed Claim and the disallowed
 28 amounts. Seaman Decl. ¶¶ 13-14. Exhibit B provides a listing of Other Investor (non-

1 USFIA) Claims, showing the Allowed Claim and the disallowed amounts. Id. Exhibit C
2 provides a list of all non-investor creditor claims including, but not limited to, employees,
3 vendors and taxing authorities,³ the Receiver’s recommended Allowed Claim amount and
4 the disallowed amounts. Id. Exhibit D provides a list of the duplicate Claims, all of which
5 the Receiver recommends be disallowed. Seaman Decl. ¶ 14.

6 It is important to note that the Claims are presented on an entity basis solely for the
7 ease of presentation. As reflected in the Receiver’s accounting, all funds of the
8 Receivership Entities were commingled and no meaningful distinction was made by
9 Mr. Chen or anyone else with regard to the sources and uses of the investor funds.
10 Accordingly, all funds have been pooled by the Receiver and will be distributed in
11 accordance with the Receiver’s proposed Distribution Plan.

12 **D. Special Circumstances / Late Claims.**

13 1. Aggregated Claims of Leaders.

14 The USFIA enterprise involved using so-called group leaders (“Leaders”) who
15 acted as sales agents or distributors of Gemcoins and other investments in the Receivership
16 Entities. Investors gave their money to these Leaders, who then turned over all or most of
17 the money to USFIA or other Receivership Entities. Leaders took a portion of the
18 underlying investors’ funds or received fees and/or commissions from the Receivership
19 Entities. Seaman Decl. ¶¶ 16-17. Many investor claims were submitted on behalf of
20 multiple investor claimants by Leaders who sold the so-called Gemcoins to them. In some
21 cases, Leaders submitted a single claim with documentation that purported to include the
22 claims of hundreds of individual investor claimants. The Receiver and his staff carefully
23 and diligently broke these aggregated claims into individual claims and reviewed each of
24 them on its own merits. Per Exhibits A-B to the Seaman Declaration, the Receiver
25 recommends that only the individual investor claims be allowed and that the Court
26 disallow all aggregated claims submitted by Leaders.

27
28 ³ The Franchise Tax Board has filed claims. The IRS has not filed claims however the Receiver has addressed the IRS and other Tax Claims in Section III, below.

1 2. Post-Bar Date Vecast Investor Claims.

2 While the claims evaluation process was being conducted, the Receiver received
3 inquiries from certain investors who had not received notice of the claims bar date, most
4 notably from investors in Vecast, Inc. (“Vecast”). Vecast was not listed as one of the
5 Receivership Entities and claimants were not immediately aware that they could or should
6 file a claim. The Receiver is also informed that certain Insiders⁴ of USFIA told Vecast
7 investors that they could not file claim in the USFIA receivership based upon their Vecast
8 investment.

9 After investigating the claims submitted by Vecast investors, the Receiver
10 determined that Defendant Chen had used shares in Vecast to assuage disgruntled Amkey,
11 Inc. investors (*i.e.* those who had received no return on their Amkey Inc. investments.)
12 Seaman Decl. ¶ 18. These Amkey, Inc. investors were charged a transfer fee, and, in some
13 cases, invested more cash into the Vecast enterprise.

14 Since the claims evaluation was not yet completed and considering the fact that
15 these Vecast investor’s money was traced to the Receivership Entities, the Receiver
16 believes it is fair and equitable to include the Vecast investors as claimants and allow them
17 to participate in the Plan of Distribution. Seaman Decl. ¶¶ 18-19. As such, the Receiver
18 requests the Court to allow the late filed claims of Vecast investors as reflected on
19 Exhibit B. Seaman Decl. ¶ 21. The Receiver has proposed to allow Vecast claims in an
20 amount equal to the transfer fee plus the cash paid by the investor to the Receivership
21 Entities. The claims of the Vecast investors were verified by the company records and in
22 aggregate are consistent with the forensic accounting.

23 3. Duplicate claims.

24 Through the claims review process, the Receiver identified 635 duplicate claims,
25 which total \$11,053,443.26. See Exhibit D to Seaman Decl. ¶ 20. A variety of
26

27 ⁴ The term “Insiders” as used in the Distribution Plan and herein refers to those individuals who
28 are relatives (including but not limited to siblings, wives, children, or girlfriends) of Defendant
Steve Chen, and officers or other persons involved in the operations or management of
Receivership Entities, such as salespersons or Leaders.

1 circumstances appear to have led to the filing of duplicate claims, including but not limited
2 to some confusion arising out of the extension of the bar date, the foregoing described
3 aggregated claims, and people filing claims for others. The Receiver recommends that the
4 duplicate claims be disallowed.

5 4. Currency differences.

6 A significant number of investors are from outside the United States and filed their
7 claims in the currency in which they made their investment. The claims required
8 calculations to convert the amount to U.S. dollars. The Receiver recommends allowing
9 claims solely in U.S. dollars.

10 5. Other Timing Issues.

11 (a) Investments that preceded January 1, 2010. It appears that
12 Defendant Chen raised money from investors starting as far back as 2004. As set forth in
13 the Receiver's Forensic Accounting, the oldest receivership asset purchased with investor
14 funds was acquired in January 2010. All of the money recovered for distribution is tied to
15 investments made and assets acquired after January 2010. Considering that funds invested
16 prior to January 2010 cannot be tied to the fraudulent scheme that is the subject of this
17 receivership or traced to any receivership assets, the Receiver objects to all claims arising
18 or based upon investments made before January 2010. These claims are so noted on
19 Exhibit B.

20 (b) Investments that were made subsequent to the Preliminary
21 Injunction. The Receiver understands that after the entry of the TRO, certain Insiders and
22 Leaders raised money outside of the United States in connection with successor entities
23 under names such as, ALCoin and Lucky Coin. These were not Receivership Entities. A
24 few confused investors filed claims arising out of these investments. Their money was not
25 received by the Receivership Entities. Accordingly, these claims were disallowed.

26 (c) 11th Hour Investors. Following the entry of the TRO, the
27 Receiver received investor funds in the amount of \$974,510.40 via wire transfers. Seaman
28 Decl. ¶ 23. The Receiver believes that it is appropriate to return this money to the

1 investors, however, he can only identify and locate four investors who had invested
2 \$76,000. Id. The Receiver recommends that each of these 4 investor claims be allowed
3 and paid in full because the transactions at issue were not complete at the time the TRO
4 was entered and therefore they should effectively be reversed by returning the funds (in
5 full) to the applicable investors. Seaman Decl. ¶ 23. Unfortunately, the balance of
6 \$898,510.40 could not be tied to any identifiable investors. As such, these funds have
7 been pooled with the balance of receivership proceeds and the Receiver recommends the
8 money be distributed to Claimants with Allowed Claims pursuant to the Distribution Plan.

9 **E. Objections and Disputed Claims By Entity.**

10 The following reflects the Receiver's claims analysis and recommendations with
11 regard to disallowed claims submitted in connection with each of the Receivership
12 Entities. Again, the Claims are presented on an entity basis solely for the ease of
13 presentation. All funds of the Receivership Entities were commingled and no meaningful
14 distinction was made by Mr. Chen or anyone else with regard to the sources and uses of
15 the investor funds.

16 1. USFIA.

17 There were 6,428 claims submitted that were tied directly to USFIA. The Receiver
18 recommends allowing 5,514 of these claims in full with a total value of \$32,309,934.19.
19 Seaman Decl. ¶ 24. The Receiver has partial objections in the amount of \$9,228,965.20 to
20 763 the USFIA claims. Id. The proposed allowed value of the partially objected to claims
21 is \$13,152,884.03. Id. The partial objections are based upon the Receiver's inability to
22 reconcile or confirm the investors' claimed amounts to those amounts reflected in the
23 back-office database or the Receiver's forensic accounting. In some cases, the Claimants
24 also failed to reduce the amount of their claims based upon the funds they received (i.e. the
25 money-out). See Exhibit A to Seaman Declaration for a list of the USFIA claims. There
26 are 151 USFIA related claims, with a value of \$6,797,137.00 that the Receiver objects to
27 in full. The reasons for rejecting the claims in full include the inability to tie the claimed
28 amount to amounts reflected in the foregoing described receivership records, and the

1 failure of claimants to provide evidence to support their claim. Seaman Decl. ¶ 25. In
2 addition, the Receiver also recommends disallowing the claims submitted by Leaders,
3 Insiders and “net winners” (i.e. those investors who have already recovered 100% of their
4 principal). The charts attached as Exhibit A to the Seaman Declaration reflect the
5 Receiver’s recommendations as to the USFIA claims.

6 2. Amkey/Vecast Claims.

7 As set forth above, the Receiver recommends that the claims of former Amkey, Inc.
8 shareholders who were given shares of Vecast, be allowed based upon the amount the
9 Receivership Entities received for transfer fees and cash investments by Vecast or Amkey
10 related claimants. As reflected in Exhibit B to the Seaman Declaration, the Receiver
11 recommends disallowing the claims of Vecast and Amkey, Inc. investors in the amount of
12 \$13,450,348.92 because they predate January 1, 2010, (the time at which the Receivership
13 Entities began accumulating assets), as well as claims filed by Insiders or Leaders who
14 were collecting investor funds and/or facilitating the sale of stocks in Amkey and Vecast.
15 The Receiver recommends allowing Vecast claims in the amount of \$26,978,984.03.

16 3. Apollo REIT Claims.

17 The Receiver received 177 claims from Apollo REIT investors totaling
18 \$12,228,683.64 and recommends allowing claims with a total value of \$7,885,695.93. See
19 Exhibit B to the Seaman Decl. The Receiver recommends denying Apollo REIT claims
20 totaling \$4,342,987.71 in part or in full because these claims could not be substantiated by
21 the records of Receivership Entities or information received from Claimants. Id.
22 Moreover, in some cases, Claimants failed to account for cash “interest dividends” that
23 they received (i.e. “money-out”). In other cases, Apollo REIT investors made claims
24 based upon stock value rather than cash payments. The Receiver also recommends
25 disallowing claims made by Insiders. The Receiver’s recommendations with regard to the
26 Allowed Claims received from Apollo REIT claimants are reflected on Exhibit B.

27
28

1 4. Ally Investors and Li Zhao.

2 Li Zhao, aka Jennifer Zhao, filed 3 claims on behalf of Ally Investors in the amount
3 of \$3,134,930.10 plus a claim to recover the contents of a safe deposit box. Li Zhao is the
4 consummate Insider. Seaman Decl. ¶ 28. She is the mother of one of Chen’s children,
5 was the highest paid employee of USFIA, received other significant benefits including
6 trips to luxury hotels in Las Vegas, and operated Ally Investors, which was the recipient of
7 millions of investor dollars. Seaman Decl. ¶¶ 28-29. There is no basis for Ms. Zhao to
8 independently make a claim against the Receivership Entity based upon a cash investment
9 nor is there any basis for her claim to the contents of the safe deposit box. The Receiver
10 previously settled the Receivership Entities’ affirmative claims against Ms. Zhao wherein
11 Ms. Zhao released all claims to the Ally Investor bank accounts and the associated safe
12 deposit box contents. [Dkts. 354-1, 369.]

13 Ally Investors invested \$100,000 in Apollo REIT. This entity was an affiliate of the
14 Receivership Entities, and, per the settlement, any claims of Ally Investors would be an
15 asset of the Receivership Estate. There were also two claims received from Ms. Zhao’s
16 family members, Qi Chen and Yanhong Wu, totaling \$4,026,487.95. Seaman Decl. ¶ 29.
17 These two claims were purportedly based upon investments that they made in Ally
18 Investors. The Receiver was unable to identify the source of the funds that were allegedly
19 invested. In other words, the Receiver could not find records or evidence that the money
20 came from the individual investors. The Receiver sent emails to Qi Chen and Yanhong
21 Wu requesting additional information from these claimants in order to substantiate their
22 claims, but did not receive any response. Id. The Receiver objects to the claims because
23 these investors failed to present evidence that they invested their own money in the
24 Receivership Entities.

25 5. USFIA/Receivership Entity Insiders.

26 As noted above, the Receiver has objected to the claims of 3 claimants who the
27 Receiver has identified as Insiders (as defined above). The claims by Insiders were
28 primarily based upon equity interests in entities that were controlled by them, including but

1 not limited to Amkey Global, Steamfont Investment Group, and Ally Investors. These
 2 equity interests have no monetary value. The Receiver also objected to claims filed by
 3 Leaders (and others) who assisted Mr. Chen, including his network of sales people in
 4 China.

5 **F. Non-Investor Claims.**

6 Vendors, service providers and other non-investor claimants filed claims totaling
 7 \$5,810,301.98. Seaman Decl. ¶ 31. In the aggregate, the Receiver objects to claims of
 8 \$5,563,384.15 and recommends allowable claims of \$246,917.83. Seaman Decl. ¶¶ 31-32.

9 Specifically, the Receiver objects to the following creditor claims:

10 Claimant	Amount	Comment
11 Kim R Holland	\$8,000.00	Speakers at fund raising events. Insider, Amkey Global funds/Steve
12 Mo Chen	\$413,531.58	Chen. Participated in wrongful fundraising activities.
13 Steamfont Investment Group	\$2,078,020.00	Receivership Entity. This was filed by Insider.
14 Gianluca Landini	\$5,000.00	Unknown/Unsubstantiated claim Receivership Entity. This was filed by
15 Ally Investors LLC	\$3,034,930.10	Insider.
16 Total	\$5,539,481.68	

17
 18 None of these claimants demonstrated that they provided actual goods and services to the
 19 Receivership Entities during the pre-receivership period. As such, the Receiver
 20 recommends that these claims be disallowed.

21 The Receiver recommends that the following vendor claims be allowed based upon
 22 his confirmation that each claimant provided goods or services and was not otherwise a
 23 Leader or Insider.

24 Creditor	Amount	Service/goods provided
25 State Compensation Insurance Fund	\$1,898.26	Workers comp insurance
26 Lihua Wei	\$1,520.00	Employee reimbursement
27 Meiji Sign Inc.	\$53,380.35	Printed materials
28 Steven Z. Wang	\$133,626.97	345 Oak Mountain ⁵

⁵ The Steve Z. Wong claim is for work performed at 345 Oak Mountain Rd. which the Receiver

1	Los Angeles County Treasurer	\$1,365.20	Unsecured property tax
2	GPS Logix, Inc.	\$49,701.58	Shipping, Amkey Global
	LiLi Young	\$5,425.47	Employee reimbursement
3	Total	\$246,917.83	

4 In addition, the Franchise Tax Board filed five claims in the aggregate amount of
5 \$26,751.41. The Receiver recommends that the claims be allowed but be subordinated to
6 investors claims until such claims are paid as set forth in Distribution Plan below. See
7 Exhibit C to the Seaman Declaration for detail.

8 **G. Employee Claims.**

9 Employees filed claims for \$93,298.26. The Receiver agrees that \$87,934.99 are
10 valid wage claims. The Receiver objects to employee claims of \$5,363.27 of which \$850
11 arises from a calculation error and \$4,513.27 is for waiting time penalties. The Receiver
12 recommends that the employee claims that are allowed be given priority and be paid in
13 full, which is consistent with both bankruptcy law and state laws that give valid wage
14 claims priority.

15 **H. Investments Made in Unrelated Entities.**

16 Certain claimants filed claims for investments they made in entities that are outside
17 of the scope of the Appointment Order (“Non-Receivership Entities”). These Non-
18 Receivership Entity claims are so noted on Exhibits A-C. The Receiver objects to these
19 claims and recommends the Court deny the claims as reflected on Exhibits A-C.

20 **III. INCOME TAX CLAIMS.**

21 The tax issues facing the Receivership Entities are significant and impair the ability
22 of the Receiver to make prompt distributions under the Distribution Plan. The Receiver's
23 success in recovering \$65 million combined with Mr. Chen's fraudulent raising of over
24 \$180 million during the pre-receivership years have given rise to the possibility of
25 significant tax liabilities. The Receiver believes that the Receivership Entities should not
26

27
28 subsequently sold for \$4.38 million. The original claim is for \$157,529.44, however the Receiver objects to \$23,902.47 of the claim based upon pre-receivership payments of \$20,000 that were not deducted from the claim and \$3,902.47 for an amount not invoiced.

1 have tax liabilities in light of, among other things, the fact that Mr. Chen used the
2 Receivership Entities to fraudulently raise funds solely for his own (and his family's)
3 benefit, and therefore the Receivership Entities themselves did not benefit from the
4 fraudulent activities. Seaman Decl. ¶ 34. Moreover, every dollar paid to the IRS will be a
5 dollar less for the investor victims. However, the Receiver must wait for the Internal
6 Revenue Service ("IRS") and the Franchise Tax Board ("FTB") to review the tax returns
7 and determine their respective positions before the outcome is certain and distributions can
8 be made. Seaman Decl. ¶ 35.

9 The Receiver is prepared to file the Receivership Entities' tax returns for the
10 applicable 2014 and 2015 tax years (the "pre-receivership periods") as set forth below.
11 For income tax purposes, the receivership is treated as a qualified settlement fund ("QSF"),
12 and the Receiver is also prepared to file the QSF returns for the 2015 – 2019 tax years and
13 also will be preparing QSF returns for the 2020 and 2021 tax years (and any later years if
14 necessary) when due (the 2015 - on tax years for the QSF are collectively referred to
15 herein as the "post-receivership periods"). Seaman Decl. ¶ 35.

16 While investors paid funds directly to the Receivership Entities, there is legal
17 authority which supports not reporting the receipt of such funds as taxable income on the
18 Receivership Entities' returns since Mr. Chen used the Receivership Entities solely for his
19 own personal benefit in furtherance of his fraudulent scheme. However, in addition to the
20 fraudulent scheme, the Receivership Entities also engaged in a few legitimate activities.
21 While the Receivership Entities' return will not report the receipt of investor funds as
22 taxable income, to be conservative, the Receivership Entities' returns will report any
23 income from the legitimate activities even though investor funds may also have been used
24 in these activities.

25 The Receiver anticipates that with potentially a few minor exceptions, the returns
26 will reflect that net taxable losses or any net taxable income in one tax year are offset by
27 net operating loss carrybacks or carryforwards from other tax years. As such, if the IRS
28 and FTB (collectively referred to herein along with any other applicable taxing authority,

1 as the “Taxing Authorities”) accept the returns as filed, there should be little to no income
2 tax liability from those returns (the Receiver intends to pay any tax associated with the
3 limited legitimate activities reported on the returns). However, the Receiver cannot
4 assume that the taxing authorities will agree with the Receiver’s tax positions and accept
5 the returns as filed.

6 In addition, there may be other income tax issues beyond the returns filed by the
7 Receiver, including issues arising out of returns filed by Mr. Chen or other entities Chen
8 formed or which are otherwise associated with the fraudulent scheme. These potential
9 issues necessitate the need for a global resolution of all tax issues with the taxing
10 authorities, not just acceptance of the returns the Receiver files.

11 While the applicable “prompt assessment” period for the pre-receivership corporate
12 and QSF returns is 18 months, the Receiver will request that the Taxing Authorities
13 expedite their review of the returns and provide a determination of whether they accept the
14 returns within sixty days. Hopefully the Receiver and the Taxing Authorities can reach a
15 global resolution on all issues in a timely manner.

16 To that end, the Receiver has already reached out to the applicable insolvency
17 departments of the Taxing Authorities that handle receivership returns and in particular
18 those individuals who have been assigned to review these returns. The Receiver hopes
19 (but cannot guaranty) to have such agreements with the Taxing Authorities by the end of
20 the second quarter of 2021. Seaman Decl. ¶ 35. Again, while the Receiver will act
21 diligently to secure agreements with the Taxing Authorities by then or as soon as possible
22 thereafter, such agreements are not within the Receiver's control.

23 If the Taxing Authorities determine that the Receivership Entities owe tax based on
24 the returns the Receiver files or otherwise, then the Receiver will seek an agreement with
25 the applicable Taxing Authorities wherein the Taxing Authorities will subordinate
26 payment of their respective claims to the payment of the investors until the investors are
27 paid in full. Seaman Decl. ¶ 35. The Receiver understands that such agreements may take
28

1 additional time as they may be beyond the scope of the insolvency departments of the
2 Taxing Authorities.

3 The Receiver will also need to file returns for the QSF and for the 2020 and 2021
4 tax years when due (and any later years of necessary), but the Receiver anticipates that
5 those returns will report losses as most taxable transactions that could produce taxable gain
6 (e.g., sales of receivership assets) have already taken place. The Receiver may again
7 contact the Taxing Authorities to request an expedited review and global agreement with
8 respect to such returns. Depending on the results of negotiations with the Taxing
9 Authorities, the Receiver may determine that a distribution reserve is necessary for any
10 potential tax liabilities or not make distributions until the amount of all potential tax
11 liabilities are resolved.

12 In the meantime, it is important to clarify that the Receiver is only acting as the
13 equity receiver for the below described 11 Receivership Entities. This is necessary so that
14 the Taxing Authorities are aware that the Receiver is only obligated to file returns for these
15 11 entities and no others (noting that two of the entities, Aborell REIT II LLC and Ahome
16 Real Estate LLC, are tax partnerships for which filing the pre-receivership returns is
17 arguably not required but the Receiver believes he nevertheless should file since the
18 activities of these entities were a significant part of the overall scheme.) Seaman Decl.
19 ¶ 36. As noted above, the Receiver will seek as part of any global agreement with the
20 Taxing Authorities an acknowledgement that he has filed all required returns, and then
21 pursuant to such agreement the Receiver can make distributions. The following are the 11
22 Receivership Entities for which the Receiver will file income tax returns with the
23 applicable tax years:

24 Aborell Advisors I LLC (formerly Apollo Advisors I LLC) (2015)

25 Aborell Mgmt I LLC (formerly Apollo Mgmt I LLC) (2015)

26 Aborell REIT II LLC (formerly Apollo REIT II LLC) (2015)

27 Ahome Real Estate LLC (2014 and 2015)

28 Alliance Financial Group, Inc. (2015)

1 Alliance NGN, Inc. (2014 and 2015)

2 Amauction, Inc. (2014 and 2015)

3 Amkey Global Corporation (2015)

4 Amkey, Inc. (2014 and 2015)

5 Hills Garden Hotel, LLC (2015)

6 USFIA, Inc. (2014 and 2015)

7 The Receiver request the Court to affirm that the above-named Receivership
8 Entities are the sole Receivership Entities.

9 **IV. DISTRIBUTION PLAN.**

10 As noted above, proposed distribution of proceeds under the Distribution Plan is
11 contingent upon resolution of the pre-receivership and post-receivership federal and state
12 income tax claims. As of the date of this Distribution Plan, there has not been a
13 determination of the tax claims. However, as noted above, it appears based on the income
14 tax returns that the Receiver intends to file, that little or no income taxes will be owed for
15 the pre-receivership or post-receivership periods.

16 As mentioned above, with respect to federal tax claims, in the event that the IRS
17 does not accept the returns the Receiver files and deems taxes to be owing based on the
18 returns or otherwise, then the Receiver will seek to subordinate the federal tax claims to
19 the claims of the investors in accordance with Department of Justice Tax Division
20 Directive #137. Absent such subordination, federal tax obligations are entitled to priority
21 in payment pursuant to 31 U.S.C. Section 3713, and a fiduciary who pays certain claims,
22 such as unsecured claims, before paying such federal claims in full is personally liable for
23 any unpaid federal claims. Therefore, to the extent that it is ultimately determined that
24 there are federal tax obligations which are not subordinated to the claims of the investors,
25 these federal tax claims shall be paid in full. No distributions can be made until the claims
26 of the IRS are determined.

27 As for state income taxes, the Receiver agrees to the amount of the claims the FTB
28 has filed, but the FTB may amend its claims based on the returns the Receiver files or

1 otherwise. The Receiver is not aware that any other states have tax claims. While the
2 Receiver believes that such state tax claims are not entitled to priority, the Receiver will
3 also seek to subordinate the payment of all state taxes to the full payment of the Allowed
4 Claims of Investors and Non-Investor Claimants.

5 The proposed Distribution Plan, attached as Exhibit "E" to the Seaman Declaration,
6 provides for funds to be set aside to pay for Administrative Expenses including, but not
7 limited to, taxes, Receiver's fees, professionals' fees, and expected operating reserves.
8 After establishing this reserve for Administrative Expenses, the Receiver proposes to make
9 a distribution to holders of Allowed Claims. Only Claimants with Allowed Claims will
10 receive distributions.

11 Equitable principles require that Investor Claimants and Non-Investor Claimants
12 with Allowed Claims should be treated equally. The Distribution Plan provides that claims
13 of Leaders and Insiders shall be disallowed or, if allowed, subordinated to payment in full
14 of non-Insider Allowed Claims. The Distribution Plan also provides that the allowed
15 Employee Claims and the 4 allowed post-receivership investor claims will be paid in full at
16 the time of the first interim distribution.

17 As such, except as otherwise provided, distributions to Claimants with Allowed
18 Claims will be determined based upon each investor's Net Harm Amount and will be paid
19 on a pro rata basis. In simple terms, a pro rata distribution enables the Receiver to pay
20 Claimants an equivalent amount based upon their proportionate interest in the available
21 receivership proceeds. As such, with the exception of allowed employee wage claims and
22 the 4 post-receivership investors, (which are recommended to be given priority), everyone
23 with an Allowed Claimant will receive the same percentage of their Allowed Claim.

24 V. ARGUMENT.

25 A. This Court Enjoys Broad Discretion In the Administration Of Claims 26 Against Fiduciary-Administered Estates.

27 This Court, sitting in equity and having authority over a fiduciary estate res, is
28 vested with wide discretion to enter orders approving the claims process and the plan for

1 disposition of assets. “The power of a district court to impose a receivership or grant other
2 forms of ancillary relief does not in the first instance depend on a statutory grant of power
3 from the securities laws. Rather, the authority derives from the inherent power of a court
4 of equity to fashion effective relief.” SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir.
5 1980). The “primary purpose of” court-created fiduciary estates “is to promote orderly and
6 efficient administration of the estate by the district court for the benefit of creditors.” SEC
7 v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment of fiduciaries is
8 authorized by this Court’s equitable powers, so too is any distribution of assets to be
9 undertaken equitably and fairly. SEC v. Elliot, 953 F.2d 1560, 1569 (11th Cir. 1992).

10 Moreover, district courts have broad power to determine the appropriate method of
11 administering a fiduciary estate. As the Ninth Circuit has explained:

12 A district court’s power to supervise an ... [estate] ... and to
13 determine appropriate action to be taken in the administration
14 of the [estate] is extremely broad. The district court has broad
15 powers and wide discretion to determine the appropriate
16 relief...

17 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005); see also SEC
18 v. Topworth Int’l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad
19 deference to the [district] court’s supervisory role and ‘we generally uphold reasonable
20 procedures instituted by the district court that serve th[e] purpose’ of orderly and efficient
21 administration of the [estate] for the benefit of creditors.”).

22 **B. The Receiver’s Application Of A MIMO Or Netting Analysis To Claims**
23 **Allowance Is Consistent With Applicable Law.**

24 Where, as here, the funds recovered by a court-appointed fiduciary are insufficient
25 to satisfy all claims in full, the Ninth Circuit and other courts have endorsed the MIMO
26 approach to claim valuation or allowance, which enables a court-appointed fiduciary to
27 determine the net value of investor and trade creditor claims. See, e.g., Capital
28 Consultants, LLC, 397 F.3d at 378 (describing net claim calculus as “an administratively

1 workable and equitable method of allocating the limited assets of a receivership”);
2 Topworth, 205 F.3d at 1116; In re Tedlock Cattle Co., Inc., 552 F.2d 1351, 1354 (9th Cir.
3 1977); In re Taubman, 160 B.R. 964, 980-82 (Bankr. S.D. Ohio 1993).

4 Here, based on the Receiver’s investigation and analysis and his forensic
5 accounting, the Receiver understands and believes that the Receivership Entities raised a
6 net total of approximately \$197 million from investors. While the Receiver has been very
7 successful at recovering and preserving assets, having recovered approximately \$63.5
8 million net of expenses as of October 31, 2020, he does not presently have funds sufficient
9 to compensate all investor claims, in full, let alone pay investors promised interest or other
10 returns on investment, consequential damages, attorneys’ fees, or other amounts over and
11 above actual net losses.

12 In the context of a receivership or similar proceeding, it is a claimant’s burden to
13 establish a valid claim against a fiduciary estate. See Lundell v. Anchor Contr. Specialists,
14 Inc., 223 F.3d 1035, 1039 (9th Cir. 2000); Revere Copper & Brass, Inc. v. Adriance
15 Machine Works, Inc., 76 F.2d 876, 878 (2d Cir. 1935). Accordingly, claims (or portions
16 thereof) submitted without support for the amount claimed, which cannot be reconciled
17 with the Receiver’s records and analysis, or which include speculative amounts based on
18 expectations or purported consequential damages, should be denied.

19 Finally, in the estate administration context, courts are deferential to the business
20 judgment of bankruptcy trustees, receivers, and similar estate custodians. See, e.g.,
21 Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989) (“[W]e are deferential to the
22 business management decisions of a bankruptcy trustee.”); Southwestern Media, Inc. v.
23 Rau, 708 F.2d 419, 425 (9th Cir. 1983) (“The decision concerning the form of ... [estate
24 administration] ... rested with the business judgment of the trustee.”); In re Thinking
25 Machines Corp., 182 B.R. 365, 368 (D. Mass. 1995) (“The application of the business
26 judgment rule ... and the high degree of deference usually afforded purely economic
27 decisions of trustees, makes court refusal unlikely.”) (rev’d on other grounds, In re
28 Thinking Machines Corp., 67 F.3d 1021 (1st Cir. 1995)).

1 The Receiver therefore submits that a MIMO, or netting, analysis of all claims and
2 the denial of consequential damage claims represents the best means for promoting an
3 orderly, fair, and efficient valuation of claims, in that it evaluates claims based exclusively
4 on actual funds invested in or contributed to the Receivership Entities less funds paid by or
5 received from the Entities, meaning it definitively identifies actual losses, without
6 speculation. Similarly, as to trade and other claims, the focus is solely upon actual goods
7 and services provided to the Receivership Entities.

8 **C. The Court Has The Authority And Should Approve The Receiver's**
9 **Proposed Allowed Amount Of Claims.**

10 District courts overseeing receiverships have the general power to employ summary
11 procedures in allowing, disallowing, and subordinating the claims of creditors. United
12 States v. Arizona Fuels, 739 F.2d 455, 458 (9th Cir. 1984); Hardy, 803 F.2d at 1040
13 (summary proceeding to approve categorization scheme for investors' claims was
14 reasonable; fair notice and a reasonable opportunity to respond was given); SEC v. Elliot,
15 953 F.2d 1560, 1571 (11th Cir. 1992) (summary claim determinations upheld where
16 claimants cannot demonstrate their rights would have been better protected by an extended
17 proceeding).

18 As part of its oversight, the District Court may “make rules which are practicable as
19 well as equitable.” Hardy at 1039, quoting First Empire Bank-New York v. FDIC,
20 572 F.2d 1361, 1368 (9th Cir. 1978). The Receiver previously requested and the Court
21 approved the set rules and procedures whereby the Receiver would calculate and allow and
22 disallow claims (i.e. MIMO calculations and denial of claims for interest and lost profits.)
23 [Doc. No. 294.] Further, the District Court approved the process for resolving claims via
24 summary proceedings. District Courts have the power to use “summary procedures in
25 allowing, disallowing, and subordinating claims of creditors . . .” United States v. Arizona
26 Fuels Corp., 739 F.2d 455, 458 (9th Cir. 1984). Plenary proceedings to resolve a claim
27 would unduly delay the administration of the case and consume monitorship estate
28 resources.

1 Here, all claims of investor claimants were calculated using a simple, money-
2 in/money-out formula that limits claims to each investor’s net loss from the Receivership
3 Entities. The money-in/money-out or “MIMO” formula has been endorsed by the Ninth
4 Circuit Court of Appeals and other courts in fraud cases where, like here, the assets of the
5 estate are insufficient to satisfy all claims in full. See Capital Consultants, 397 F.3d at 738
6 (describing a net claim calculation as “an administratively workable and equitable method
7 of allocating the limited assets of the receivership”); Topworth, 205 F.3d at 1116; In re
8 Tedlock Cattle Company Inc., 552 F.2d 1351, 1354 (9th Cir. 1977); In re Taubman,
9 160 B.R. 964, 980-82 (Bankr. S.D. Ohio 1993).

10 As to the disputed claims set forth on Exhibit A-E to the Seaman Declaration, the
11 Receiver proposed and the Court approved the parameters or limitations on claims against
12 the Receivership Estate. [See, Claims Process Order See Doc. No. 307.] Among other
13 things, claims were limited to MIMO claims and claims for contract, tort, or other
14 consequential damages arising from investments or other transactions involving the
15 Receivership Entities were to be denied or disallowed. [Doc. Nos. 299, 307.] This
16 proposed treatment places all Claimants on similar footing limiting all claims to what
17 amounts to their losses of principal verses consequential damages.

18 Notwithstanding the District Court’s Claims Process Order, other disputed
19 claimants submitted claims which are inconsistent with the approved claims treatment or
20 are otherwise unsupported by evidence. As in a bankruptcy case, it is a claimant’s burden
21 to establish a valid claim against the receivership estate. See Lundell v. Anchor Constr.
22 Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000); Revere Copper & Brass, Inc. v.
23 Adriance Machine Works, Inc., 76 F.2d 876, 878 (2d Cir. 1935) (claimants failed to
24 sustain burden of proving claims against receivership). Here, Investor Claimants and other
25 Claimants who failed to provide sufficient support and whose claims could not be
26 otherwise validated via company records should be disallowed in whole or in part per the
27 Receiver’s recommendations on Exhibits A-D of the Seaman Declaration.

28

1 **D. Tax Claims And Insider And Leader Claims If Allowed Are Properly**
2 **Subject To Subordination.**

3 Where, as here, a fiduciary is appointed by a Court at the behest of a federal agency,
4 the funds recovered by that fiduciary are ordinarily held in constructive trust for the victim
5 class that agency is charged with protecting. As a practical matter, this means that the
6 taxing entity and other unsecured Insider claims are subject to subordination, to the extent
7 they are allowed at all. See, e.g., FTC v. Crittenden, 823 F.Supp. 699, 703 (C.D. Cal.
8 1993) (estate funds held in constructive trust distributed to former customers regardless of
9 effect on IRS claims); FTC v. Ameridebt, Inc., 373 F.Supp.2d, 558, 565 (D. Md. 2005)
10 (under the doctrine of constructive trust, “even if the IRS ha[d] placed liens on
11 Defendants’ assets, those liens would not attach to property that was wrongfully obtained
12 from consumers”); SEC v. Private Equity Mgmt. Group, Inc., 2012 U.S. Dist. LEXIS
13 195213, *22-23 (C.D. Cal. September 28, 2012) (“Furthermore, the Court concludes that
14 considerations of expedience and of preserving [estate] funds for distribution to the
15 defrauded investors ... favor” treating a court-established res as held in constructive trust
16 for investors); SEC v. Stephenson Equity Util. Co., 138 F.Supp.2d 512, 532 (S.D.N.Y.
17 2001) (“A constructive trust is a powerful remedy, as it cuts off the rights of general
18 creditors as well as the rights of the United States”).

19 Here, the action filed by the Securities and Exchange Commission and the criminal
20 proceedings filed by the United States Attorney, reflect an intent to prioritize the interests
21 of investor victims and to protect the interests of the investors who purchased securities in
22 and through the Receivership Entities. Accordingly, the Receiver respectfully submits that
23 he holds the funds he has recovered to-date in constructive trust for the benefit of
24 Investors. If the Court were to allow the claims of Insiders or Leaders who participated in
25 the underlying wrongful conduct, the Receiver asserts that equity requires that such claims
26 be subordinated until such time as all Allowed Claims of Investor Claimants are paid, in
27 full. Similarly, if the Court determines it is appropriate to allow the claims of the
28

1 California Franchise Tax Board (“FTB”), the Receiver asserts that equity also requires that
2 the FTB claim be subordinated to the full payment of the Allowed Investor Claims.

3 **VI. CONCLUSION.**

4 For the foregoing reasons, the Receiver respectfully requests that this Court enter an
5 order:

- 6 1. Granting the Motion in its entirety;
- 7 2. Approving allowance of claims as set forth on Exhibits A – C to the Seaman
8 Declaration;
- 9 3. Denying the claims as set forth in Exhibit D to the Seaman Declaration;
- 10 4. Affirming that the Receivership Entities shall be limited to those 11
11 corporate entities described herein and, as such, the Receiver shall only be obligated to file
12 tax returns for those 11 Receivership Entities; and
- 13 5. Approving the Receiver’s Distribution Plan attached as Exhibit E to the
14 Seaman Declaration.

15
16 Dated: December 7, 2020

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

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18
19 By: /s/ David R. Zaro
20 DAVID R. ZARO
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