

EXHIBIT E

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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.,
 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

**[PROPOSED] DISTRIBUTION PLAN
 OF RECEIVER THOMAS A.
 SEAMAN**

Date: February 1, 2021
 Time: 10:00 a.m.
 Ctrm: 9C
 Judge Hon. R. Gary Klausner

1 **DISTRIBUTION PLAN**

2 This Distribution Plan shall govern the administration and distribution by
3 Thomas A. Seaman, the federal equity receiver (the "Receiver"), of funds collected
4 in connection with the above-captioned Securities and Exchange Commission
5 ("Commission") enforcement action.

6 As detailed below, the Receiver proposes that, after setting aside amounts
7 necessary for taxes and administrative expenses of the Receivership Estate, all
8 available funds be distributed to Investor Claimants with Allowed Claims
9 determined in accordance with the principles and methods detailed below.

10 **I. DEFINITIONS.**

11 Unless the context otherwise requires, the below terms have the following
12 meanings when used in their capitalized forms herein. Such meanings are equally
13 applicable to both the singular and plural forms of the terms.

14 "**Administrative Expenses**" means payments arising from services
15 performed and activities undertaken after the Receivership Date in connection with
16 the administration and operation of the Receivership Estate, including but not
17 limited to services rendered by the Receiver and for the Receiver by his attorneys,
18 accountants or other professionals; goods and services provided by third party
19 vendors; as well as other ordinary costs of operation. Pursuant to the terms of the
20 Receiver's engagement, Administrative Expenses are paid on a rolling basis and are
21 not subject to manner or timing of distributions under the Distribution Plan.

22 "**Allowed Claim**" means any Investor Claimant, Non-Investor Claimant or
23 Tax Claimant claim for payment against the Receivership Entities allowed by the
24 Court pursuant to an order entered in the above-captioned Receivership Case. An
25 Allowed Claim shall not include claims for interest, late fees, contract or other
26 consequential damages, contingent or unliquidated damages, claims submitted by
27 Defendants or claims by Leaders or Insiders. The allowed amount of each Claim
28 will be established upon the entry of the Court's order approving the Motion.

1 **"Bar Date"** means a date established by Court Order by which Claimants
2 were required to submit their Proof of Claim to the Receiver.

3 **"Cash"** means all cash and cash equivalents of the Receivership Entities held
4 by the Receiver.

5 **"Claim"** means any claim for payment against the Receivership Entity
6 whether or not such right is reduced to judgment, liquidated, unliquidated,
7 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or
8 unsecured.

9 **"Claim Amount"** means the net loss suffered by an Investor Claimant as
10 calculated on a MIMO basis or the amount claimed by a Non-Investor Claimant or
11 Tax Claimant.

12 **"Claimant"** or potential Claimant means a holder of a Claim, which may or
13 may not be allowed.

14 **"Court"** means the United States District Court for the Central District of
15 California.

16 **"Days"** means calendar days, unless otherwise specified herein.

17 **"Dispute"** means a written objection submitted to the Receiver by a Claimant
18 regarding the amount the Receiver has identified as the Claimant's Claim Amount.

19 **"Estate"** or **"Receivership Estate"** means the collection or aggregate of all
20 assets, including but not limited to Cash, claims, causes of action, or rights of
21 recovery held by the Receiver on behalf of the Receivership Entity.

22 **"Insider"** means Defendant Steven Chen or a Person who is: a relative of
23 Defendant Steven Chen including but not limited to children, siblings, wives and
24 girl-friends; Leaders, salespeople, and officers, directors or management involved in
25 the Receivership Entities.

26 **"Investor Claimant"** means a holder of a Claim that arises from one or more
27 investments with or in the Receivership Entity by an individual investor. The
28 MIMO calculations reflecting the Allowed Claim Amounts of Investor Claimants

1 are set forth on Exhibits A and B to the Receiver's declaration in support of the
2 Motion.

3 **"Leader(s)"** means those Persons who acted as or worked for the
4 Receivership Entities as salespeople, distributors or aggravators of investment funds
5 that were received from Investor Claimants.

6 **"MIMO"** means the money-in/money-out method used by the Receiver to
7 calculate the compensable losses. For avoidance of doubt, MIMO reflects the net
8 loss, if any, for each prospective Investor Claimant as determined by calculating the
9 net amount of each investor's aggregate actual out of pocket payments made to the
10 Receivership Entity ("Money-In"), less the aggregate amount of payments made
11 back to that investor from the Receivership Entity ("Money-Out").

12 **"Motion"** means the Receiver's Motion to Approve: (1) Receiver's
13 Recommendations As To Allowed Claims; (2) Receiver's Recommendations As To
14 Disputed Claims; (3) Authorization to Limit Scope of Receivership to Identified
15 Receivership Entities; and (4) Distribution Plan.

16 **"Non-Investor Claimant"** means a Claimant who provided valuable goods or
17 services to the Receivership Entities prior to the Receivership Date, including
18 employees and those who may qualify as Insiders or Leaders. The list of Non-
19 Investor Claimants is attached as Exhibit C to the Receiver's declaration in support
20 of the Motion.

21 **"Person"** means natural individuals as well as legal entities including, but not
22 limited to, corporations, partnerships, limited liability companies, trusts and
23 governmental entities.

24 **"Pro Rata Share"** means a proportionate share such that the ratio of the
25 consideration distributed on account of an Allowed Claim to the amount of such
26 Allowed Claim is the same as the ratio of the consideration distributed on account of
27 all Allowed Claims to the amount of all Allowed Claims.

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1 **"Proof of Claim Form"** means either the electronic claim form or hard copy
2 claim form which was established via the claims portal made available to Claimants
3 in which the Receiver provided each Claimant with notice of the Bar Date and
4 provided detailed instructions to Claimants with regard to the completion of the
5 claim form and the means to submit their Claim to the Receiver.

6 **"Receiver"** means Thomas A. Seaman, by and through The Thomas Seaman
7 Company, the federal equity receiver for the Receivership Entities.

8 **"Receivership Case"** means that lawsuit pending in the Court, known as SEC
9 v. Steve Chen, USFIA, Inc., et al., Case No. 2:15-cv-07425 RGK PLA, the
10 Honorable R. Gary Klausner, presiding.

11 **"Receivership Date"** means September 28, 2015.

12 **"Receivership Entities"** or **"Receivership Entity"** means separately or
13 collectively, the following entities:

14 Aborell Advisors I LLC (formerly Apollo Advisors I LLC)

15 Aborell Mgmt I LLC (formerly Apollo Mgmt I LLC)

16 Aborell REIT II LLC (formerly Apollo REIT II LLC)

17 Ahome Real Estate LLC

18 Alliance Financial Group, Inc.

19 Alliance NGN, Inc.

20 Amauction, Inc.

21 Amkey Global Corporation

22 Amkey, Inc.

23 Hills Garden Hotel, LLC

24 USFIA, Inc.

25 **"Tax Claimant"** means a holder of a Claim that arising from unpaid local,
26 state, or federal taxes due and payable prior to the Receivership Date.

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1 **II. TREATMENT OF CLAIMS.**

2 **A. Claims Of Investor Claimants.**

3 As reflected in the Motion, the Receiver has evaluated the Claims submitted
4 by Investor Claimants and determined the amount of each claim of the Investor
5 Claimants using the MIMO analysis to calculate the net loss suffered by each
6 investor in the Receivership Entities. Equitable principles require that all Investor
7 Claimants with Allowed Claims be treated equally, for distribution purposes.
8 Distributions to Investor Claimants with Allowed Claims will be determined based
9 on each investor's Allowed Claim Amount, using a pro rata methodology. As such,
10 the Receiver shall only make Cash payments to Investor Claimants with Allowed
11 Claims for their share of the below described available Receivership Funds, after his
12 application of the Pro Rata methodology.

13 **B. Non-Investor Claimants.**

14 As also reflected in the Motion, the Receiver evaluated claims submitted by
15 Non-Investor Claimants to assess whether the Claimants provided valuable goods or
16 services to the Receivership Estate prior to the Receivership Date. The Claims
17 submitted by Leaders and Insiders were disallowed and will not be paid. The
18 Allowed Claims of other Non-Investor Claimants with Allowed Claims will be
19 pooled along with the Allowed Investor Claims and the Allowed Claims will be paid
20 on a pro rata basis.

21 **C. Employee and Identified Post-Receivership Investors.**

22 Consistent with the Motion, the Receiver has recommended for allowance
23 certain claims of employees of the Receivership Entities for work performed prior to
24 the Receivership Date. See Exhibit C to the Receiver's declaration in support of the
25 Motion. The Receiver has also recommended for allowance the four Investor
26 Claims submitted by Investors where the funds were received after the Receivership
27 Date. As to the Allowed Claims of these identified employees and post-

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1 Receivership Date investors, the Receiver will pay the Claimants 100% of their
2 Allowed Claims.

3 **D. Tax Claimant Claims.**

4 The Receiver has completed a diligent review of the Receivership Entities'
5 records in an effort to identify Tax Claimant Claims, which have been calculated at
6 their face value. With regard to the Tax Claimant Claims received from State and
7 Local tax agencies, the claims shall be allowed per the Receiver's recommendations
8 and order of the Court. Distributions to holders of state and local Allowed Tax
9 Claimant Claims shall be subordinated to the payment of Administrative Expenses,
10 Federal tax obligations and full payment of the Investor and Non-Investor Allowed
11 Claims. If there are funds remaining in the Estate after the foregoing payments, then
12 Allowed Tax Claimant Claims of state and local agencies will be paid on a pro rata
13 basis along with all Allowed Claims.

14 As of the date of this Distribution Plan, there has not been a determination of
15 the amount of State and Federal taxes that are owed, if any. However, it appears
16 based on the income tax returns that the Receiver intends to file that no federal
17 income taxes will be owed for the pre or post receivership periods. However, it is
18 not certain that the Internal Revenue Service ("IRS") will agree with the Receiver
19 that no taxes are owed and that the tax returns are proper. In the event that the IRS
20 does not agree with the tax returns as filed by the Receiver and deems taxes to be
21 owing, the Receiver will seek the IRS' cooperation to resolve tax issues and to
22 subordinate the IRS tax claims, if any, to the claims of investors in accordance with
23 Department of Justice Tax Division Directive. To the extent that it is ultimately
24 determined that there are federal tax obligations owed to the IRS, these claims shall
25 be paid in full prior to the payment of Allowed Claims of other Claimants. No
26 distributions can be made until the claims of the IRS are determined.

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1 **III. DISTRIBUTIONS.**

2 **A. Establishment Of A Reserve For Taxes and Administrative**
3 **Expenses.**

4 As noted above, the amount of taxes that may be due and the priority of any
5 such tax claims has not yet been determined. Accordingly, once the tax issues have
6 been resolved, either by agreement with the IRS or via Court order, the Receiver
7 will file a motion for authority to make a distribution to Claimants with Allowed
8 Claims pursuant to the terms of this Distribution Plan. The Receiver envisions
9 making only one distribution. In the event sufficient additional funds should
10 become available for distribution, or there are large amounts of un-negotiated
11 distribution payments the Receiver may make a subsequent distribution, however
12 that is unlikely given the large number of claimants and expense of administering a
13 second distribution. The timing of such future distributions, if any, shall be left to
14 the reasonable judgment of the Receiver. Any Receivership Funds not remitted to
15 Claimants or Tax Claimants with Allowed Claims in connection with this
16 Distribution Plan at such time as the Receiver's engagement is terminated will be
17 remitted to the Commission for turnover to the United States Treasury.

18 The Receiver is authorized to make and implement immaterial changes to the
19 Distribution Plan, including extensions to procedural deadlines set forth herein. If a
20 change is deemed to be material by the Receiver, then he will petition the Court for
21 approval to amend the Distribution Plan prior to implementation of the change.

22 **B. Distribution Payments.**

23 As noted above, once the outstanding tax issues have been resolved, either by
24 agreement with the IRS or via Court order, the Receiver will file a motion for
25 authority to make a distribution to Claimants with Allowed Claims pursuant to the
26 terms of this Distribution Plan. Only those Claimants with Allowed Claims will be
27 entitled to receive distribution payments.

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1 The Receiver will base the distributions on his MIMO analysis and will make
2 the payments to the Claimants with Allowed Claims for their share of the funds on-
3 hand, after applying a pro rata methodology, as soon as practicable after the Court
4 has entered the order authorizing the distribution.

5 The Receiver shall make all distributions in Cash in the form of either a
6 check, electronic transfer using Paypal (when Claimants submitted their claims, they
7 were asked to choose between a check or electronic transfer via Paypal as their form
8 of payment for distributions) or other method deemed reasonable by the Receiver.
9 Unless the Claimant otherwise requests, distributions shall be directed to the name
10 and address in the Receiver's records. The tax treatment of the distributions and
11 payment of such taxes, if any, shall be the responsibility of each Claimant and
12 Claimants should consult their tax advisors for advice regarding the tax treatment of
13 the distributions they receive.

14 **C. Uncashed Distributions.**

15 Checks will bear a stale date of one hundred and twenty (120) days from the
16 date of issuance or Receiver may otherwise notify Claimants that the checks will be
17 void after 120 days. Checks that are not negotiated within the 120 day check-
18 cashing period will be voided. At such time as the Receiver deems appropriate, the
19 issuing financial institution will be instructed to stop payment on those checks.

20 The Receiver shall conduct a reasonable investigation into distribution checks
21 that remain uncashed for the purpose of identifying viable addresses for holders of
22 Allowed Claims. If a viable address can be identified, the payment shall be reissued
23 as soon as practicable. If a viable address cannot be identified, the Claimant's Claim
24 will be automatically and permanently extinguished. Any funds remaining in
25 Receivership accounts 180 days after all distribution checks have been issued shall
26 be retained and applied to future distributions on all remaining Allowed, non-
27 subordinated Claims, if any, to pay future Administrative Expenses, or as otherwise
28 ordered by the Court.

1 **IV. RETENTION OF JURISDICTION.**

2 The Court shall have and retain exclusive jurisdiction over matters arising out
3 of, or related to the Receivership and the Distribution Plan including but not limited
4 to, the following:

- 5 1. To consider any modifications deemed material by the Receiver to the
6 Distribution Plan, to cure any defect or omission, or reconcile any inconsistency in
7 the Distribution Plan, address Federal tax issues, or any order of the Court;
- 8 2. To protect or adjudicate rights to the assets of the Receivership Estate;
- 9 3. To protect the Receiver from adverse claims against the Receiver
10 arising out of or related to his work as the Receiver, (either before or after he is
11 discharged), any claims arising out of the distribution process, tax issues and/or any
12 efforts interfere with the Receiver's administration of the Estate or the Distribution
13 Plan;
- 14 4. To issue such orders in aid of execution of the Distribution Plan as may
15 be necessary and appropriate; and
- 16 5. To hear and determine all litigation, causes of action, and all
17 controversies, suits, and disputes that may arise in connection with any unresolved
18 Disputes and the interpretation, implementation, or enforcement of the Distribution
19 Plan.

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21 Dated: December 7, 2020

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

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23
24 By: /s/ David R. Zaro

25 DAVID R. ZARO
26 Attorneys for Receiver
27 Thomas A. Seaman
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