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10 Attorneys for Receiver  
Thomas A. Seaman

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

18 STEVE CHEN, USFIA, INC.,  
19 ALLIANCE FINANCIAL  
GROUP, INC., AMAUCTION, INC.,  
20 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.  
27  
28

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

**NOTICE OF MOTION AND  
MOTION FOR (A) APPROVAL OF  
SALE OF QUAIL RANCH  
PROPERTY, AND (B) AUTHORITY  
TO PAY BROKER'S COMMISSION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: April 3, 2017  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on April 3, 2017, at 9:00 a.m. in  
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street,  
4 Los Angeles, California 90012-3332, the Court will consider the motion of  
5 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for  
6 Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell  
7 Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real  
8 Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,  
9 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,  
10 and their subsidiaries and affiliates (collectively, "Receivership Entities"), for  
11 (A) approval of the sale of the Quail Ranch property, and (B) authority to pay the  
12 broker's commission ("Motion").

13 This Motion is based on this Notice of Motion and Motion, the attached  
14 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the  
15 documents and pleadings already on file in this action, and upon such further oral  
16 and documentary evidence as may be presented at the time of the hearing.

17 **Procedural Requirements:** If you oppose this Motion, you are required to  
18 file your written opposition with the Office of the Clerk, United States District Court,  
19 255 East Temple Street, Los Angeles, California 90012-3332, and serve the same on  
20 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

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

24  
25 Dated: March 2, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates

EDWARD G. FATES  
Attorneys for Receiver  
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed by this Court with full powers of an equity  
4 receiver, and ordered, among other things, to take possession of and assume  
5 authority and control over the receivership estate, including that certain  
6 undeveloped land located at 15960 and 15970 Gilman Springs Road, San Jacinto,  
7 California ("Quail Ranch Property"). Declaration of Thomas A. Seaman filed  
8 herewith ("Seaman Decl."), ¶ 3.

9 The Quail Ranch Property was acquired by Ahome Real Estate, LLC in  
10 November 2010 for \$3,967,000. The property is approximately 862 acres of  
11 undeveloped land. Shortly after his appointment, the Receiver secured the Quail  
12 Ranch Property. A portion of the property is being leased for two cellphone  
13 towers. *Id.* at ¶ 4.

14 Given that maintaining the Quail Ranch Property entails significant carrying  
15 costs to the receivership estate, including costs for insurance and property taxes,  
16 and the asset has no business purpose for the benefit of the Receivership Entities,  
17 the Receiver listed the property for sale through a licensed land broker, Hamlin  
18 Gooding ("Broker"). *Id.* at ¶ 5.

19 Given the size of the Property, the Receiver's initial approach was to sell it to  
20 a residential developer. However, the Receiver learned that there were several  
21 physical and financial impediments to development. Specifically, the site is not  
22 close to utilities or sewers. The topography of the site is very hilly and significant  
23 grading would be required for residential development, nor is the land entirely  
24 zoned for residential uses. The Environmental Protection Agency owns the  
25 neighboring land and would likely not be friendly to development. *Id.* at ¶ 6.

26 Therefore, with Broker's assistance, the Receiver explored alternate uses for  
27 the Quail Ranch Property to maximize its value. After walking the property and  
28 observing the numerous dirt bike trails on the property and neighboring properties,

1 and observing the topography and expansiveness of the land, the Receiver directed  
2 Broker to market it for off road vehicle use. Broker solicited numerous contacts in  
3 that market and approached the State of California for use as an off road vehicle  
4 park. The State was interested, but a sale would likely have taken 2 years to fund  
5 and complete. *Id.* at ¶ 7.

6 The Receiver also obtained an appraisal, which indicated the value of the  
7 property to be \$2.91 million or \$3,375 per acre. Shortly thereafter, an all cash offer  
8 from Tonto Corporation ("Buyer") was received. After careful review and  
9 negotiations with the Buyer, the Receiver accepted its offer of \$4,160,000, subject  
10 to Court approval.<sup>1</sup> Buyer is willing to close quickly and there are no contingencies  
11 to the sale other than Court approval. *Id.* at ¶ 8.

12 In accordance with the Receiver's acceptance, the Receiver and Buyer  
13 entered into a Purchase and Sale Agreement and Joint Escrow Instructions  
14 ("Agreement"). Among other things, the Agreement specifies that the sale is  
15 subject to Court approval, is on an "AS IS" basis, will be made with all cash, and is  
16 subject to overbids. The Agreement is attached as Exhibit A to the Seaman  
17 Declaration filed herewith. *Id.* at ¶ 9.

18 In his reasonable business judgment, the Receiver believes that the  
19 Agreement, obtained through the commercially reasonable and customary method  
20 of listing the property with a licensed broker and after arm's length negotiations  
21 with Buyer, reflects the fair market value of the Quail Ranch Property. Indeed, the  
22 purchase price vastly exceeds the appraised value, indicating the use as an off road  
23 park is the highest and best use of the property. Moreover, the sale is subject to  
24 overbid as discussed below to ensure that the highest and best price is obtained. *Id.*  
25 at ¶ 10. Accordingly, the Receiver respectfully requests this Court grant this

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26  
27 <sup>1</sup> As noted below, the originally negotiated price was \$4,000,000, but Buyer  
28 agreed to cover the cost of its broker's commission. Buyer therefore added  
\$160,000 to the purchase price, which funds will be paid to its broker directly  
from escrow.

1 Motion and (1) approve the sale of the Quail Ranch Property and (2) authorize  
2 payment of the Broker's commission.

3 **II. PROCEDURAL BACKGROUND**

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

14 **III. TERMS OF THE AGREEMENT**

15 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.  
16 Its terms are summarized as follows:<sup>2</sup>

17 **Court approval.** All aspects of the Agreement and the sale are subject to  
18 approval by the Court.

19 **Purchase Price.** \$4,160,000.

20 **Closing Date.** Escrow to close within 10 days of Court approval.

21 **Deposit.** Buyer has deposited \$100,000 into escrow, refundable only if the  
22 Court does not approve the sale to Buyer.

23 **As Is Purchase.** Buyer agrees to purchase the Quail Ranch Property on an  
24 "AS IS" basis.

25

26

27 <sup>2</sup> The terms of the Agreement are summarized herein for convenience only. In  
28 the event of any conflict between the Agreement and the summary provided  
herein, the Agreement governs and controls.

1           **Overbid Procedures.** The sale is subject to overbid and a public auction if  
2 one or more qualified overbids are received. To qualify as an overbidder,  
3 prospective purchasers must (a) submit a fully executed Purchase and Sale  
4 Agreement and Joint Escrow Instructions in substantially the same form as the  
5 Agreement, (b) provide proof of funds sufficient to close the sale, and (c) provide  
6 an earnest money deposit equal to 10% of the purchase price. All of the above,  
7 must be provided to the Receiver no later than seven days prior to the hearing date.

8           **Broker's Commission.** By separate agreement, the Receiver has agreed,  
9 subject to Court approval, to pay Broker a commission of 4.5% of the final  
10 purchase price. Broker has invested substantial time into preparing the Quail  
11 Ranch Property for sale, locating potential purchasers, marketing the property to  
12 them, negotiating terms, and preparing sale documents. Broker has continued to  
13 market the property to potential overbidders since the Agreement was executed.

14           Buyer's broker will be paid separately from the sale proceeds by agreement  
15 with the Receiver. Specifically, the originally negotiated purchase price was  
16 \$4,000,000. Buyer then agreed to add \$160,000 to the purchase price, which  
17 amount is earmarked for and will be paid directly to its broker.

#### 18 **IV. ARGUMENT**

19           "The power of a district court to impose a receivership or grant other forms  
20 of ancillary relief does not in the first instance depend on a statutory grant of power  
21 from the securities laws. Rather, the authority derives from the inherent power of a  
22 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
23 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
24 and efficient administration of the estate by the district court for the benefit of  
25 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
26 of a receiver is authorized by the broad equitable powers of the court, any  
27 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
28 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

11 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
12 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
13 and 'we generally uphold reasonable procedures instituted by the district court that  
14 serve th[e] purpose' of orderly and efficient administration of the receivership for  
15 the benefit of creditors.").

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

19 **A. The Proposed Sale**

20 It is generally conceded that a court of equity having custody and control of  
21 property has power to order a sale of the same in its discretion. *See, e.g., Elliott,*  
22 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide  
23 discretion to determine relief in an equity receivership). "The power of sale  
24 necessarily follows the power to take possession and control of and to preserve  
25 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
26 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
27 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d  
28 ed. 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court



1 of equity orders property in its custody to be sold, the court itself as vendor  
2 confirms the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law &*  
3 *Practice of Receivers* § 487).

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

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

21 Here, the proposed sale to Buyer should be approved. First, the Quail Ranch  
22 Property is not necessary for any ongoing operations of the Receivership Entities.  
23 Moreover, holding the property requires the payment of property taxes, insurance,  
24 and maintenance costs, which the minimal rental income does not cover. Seaman  
25 Decl., ¶ 11.

26 The Quail Ranch Property has been fully exposed to the market by Broker  
27 through the customary means of listing the property, advertising, and showing the  
28 property to interested parties. In response, the Receiver received and evaluated



1 multiple offers, including that submitted by Buyer. The Receiver further negotiated  
2 the terms of the sale, including countering the offer from Buyer at a higher price.  
3 *Id.* at ¶ 12.

4 Through this process, the Receiver obtained Buyer's final offer and  
5 agreement to purchase the Quail Ranch Property at the price of \$4,160,000.  
6 Therefore, the Receiver believes the proposed sale represents the fair market value  
7 and will generate the highest and best recovery from the property. *Id.* at ¶ 13.  
8 Thus, the Receiver respectfully requests that the Court approve the sale to Buyer.

9 **B. Further Notices/Appraisals Should Be Waived**

10 Sales of real property out of receivership are governed by 28 U.S.C. § 2001,  
11 which provides that notice shall be given "by publication or otherwise as the court  
12 directs . . ." 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the court  
13 with discretion in directing the terms and conditions of the public sale." *Keybank*  
14 *Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S. Dist. LEXIS 157828, \*4  
15 (M.D. La. 2012); *see also U.S. v. Little*, 2008 U.S. Dist. LEXIS 93467, \*4-5  
16 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in setting the terms  
17 and conditions of a sale pursuant to 28 U.S.C. § 2001."); *U.S. v. Heasley*, 283 F.2d  
18 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C. § 2001(b), "the matter  
19 of confirming a judicial sale rests in the sound judicial discretion of the trial  
20 court . . ."); *U.S. v. Peters*, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C.  
21 § 2001(a) authorizes a court to direct the terms and conditions of the sale).

22 Here, as noted above, the Quail Ranch Property has been fully exposed to the  
23 market by listing the property, holding open houses, and other customary marketing  
24 efforts conducted by Broker. Therefore, further mailing or publication of notice, or  
25 obtaining independent appraisals imposes significant costs to the receivership estate  
26 with little to no corresponding benefit. Accordingly, to the extent 28 U.S.C.  
27 §§ 2001, 2002 and Local Rule 66-7 require further mailing or publication of notice,  
28

1 appraisals, or other procedures, such provisions should be waived. Seaman Decl.,  
2 ¶ 14.

3 **C. Additional Relief**

4 Pursuant to its broad equitable powers with respect to the administration of  
5 receivership assets, the Receiver requests the Court authorize payment from the  
6 proceeds of the sale of the Quail Ranch Property, the valid liens,<sup>3</sup> taxes, and any  
7 other claims on the property, subject to any objections to such liens, taxes, or  
8 claims by the Receiver.

9 Finally, the Receiver requests authority to pay Broker a commission in the  
10 amount of 4.5% of the final purchase price.<sup>4</sup> Based on his experience in real estate  
11 transactions and consultation with Broker and counsel, the Receiver believes that  
12 Broker's commission of 4.5% is commercially reasonable and considerably below  
13 industry standards for the sale of undeveloped land. *Id.* at ¶ 15.

14 **V. CONCLUSION**

15 For the reasons set forth herein, the Receiver respectfully requests entry of an  
16 Order approving and authorizing: (1) sale of the Quail Ranch Property to Buyer,  
17 and (2) payment of a 4.5% commission to Broker from the sale proceeds.

18  
19 Dated: March 2, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

20  
21 By:           /s/ Edward Fates            
22 EDWARD G. FATES  
23 Attorneys for Temporary Receiver  
24 THOMAS A. SEAMAN  
25

26 <sup>3</sup> The Receiver is not aware of any valid liens on the Property, which was  
27 purchased with all cash.

28 <sup>4</sup> As noted above, Buyer agreed to cover its broker's commission, and therefore  
added \$160,000 to the negotiated purchase price of \$4,000,000, which funds are  
earmarked for and will be paid directly to Buyer's broker from escrow.