

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

27 Defendants.  
28

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

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

Date: August 21, 2017  
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 August 21, 2017, 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 (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of sale of commercial real property (Rancho Cucamonga Land), 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, 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.

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

Dated: July 12, 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 all assets of the receivership estate, including that certain  
6 undeveloped real property located near 8020 Almond Street, in the cities of Upland  
7 and Rancho Cucamonga, California (San Bernardino County, APNs: 0200-061-08,  
8 0200-061-10, 0200-061-27, 0200-061-28, 0200-061-29, 0200-061-30, 0200-061-31,  
9 1061-081-03) ("Property"). The Property was purchased in September 2010 for  
10 \$1.2 million by Alliance Financial Group Inc. Declaration of Thomas A. Seaman  
11 filed herewith ("Seaman Decl."), ¶ 3.

12 The Property is comprised of eight parcels that collectively make up  
13 approximately 25 acres of vacant land. The Receiver obtained an appraisal which  
14 indicated a value of \$850,000 as of November 2016. After reviewing recent  
15 comparable sales and similar property listings, the Receiver listed the Property for  
16 sale with a licensed broker, Hamlin Gooding ("Broker"), on December 23, 2016.  
17 The Broker recommended attempting to obtain a higher value than the appraisal, so  
18 the Property was listed for \$1.3 million. *Id.* at ¶ 4.

19 The Broker received numerous inquiries and several verbal offers that were  
20 unsatisfactory. Ed Shamuilian and Jaleh Shamuilian ("Buyer") initially offered  
21 \$900,000, which the Receiver did not accept. Negotiations ensued, which brought  
22 the price up to \$1,210,000. However, Buyer declined to waive contingencies and  
23 withdrew from the transaction at that price. The Receiver then entered into a  
24 contract with another prospective purchaser at a price of \$1,230,000. This  
25 prospective purchaser also withdrew after conducting due diligence, which revealed  
26 density, environmental, and seismic issues. The Receiver then attempted to get  
27 Buyer to agree to a price below \$1,210,000, but they would not. The Receiver  
28 instructed Broker to lower the list price and continue to expose the Property to the

1 marketplace. A period of six weeks went by and no offers were received. The  
2 Receiver then instructed Broker to re-approach Buyer to try and resurrect the  
3 transaction. Buyer would only agree to pay their initial offer of \$900,000, and the  
4 Receiver accepted, subject to overbid and Court approval. Buyer's offer is non-  
5 contingent (other than Court approval) and Buyer has provided proof of funds  
6 sufficient to close. The Receiver worked hard to maximize the value of the Property  
7 and was able to achieve a price that is 6% above the appraised value. *Id.* at ¶ 5.

8 In accordance with the Receiver's acceptance, the Receiver and Buyer entered  
9 into a Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement").  
10 Among other things, the Agreement specifies the sale is subject to Court approval  
11 and is on an "AS IS" basis. The Agreement is attached as Exhibit A to the Seaman  
12 Declaration filed herewith. *Id.* at ¶ 6.

13 In his reasonable business judgment, the Receiver believes the Agreement,  
14 obtained through the commercially reasonable and customary method of listing the  
15 property with a licensed broker and after arm's length negotiations with Buyer,  
16 reflects the fair market value of the Property. Moreover, the sale is subject to  
17 overbid and public auction procedures discussed below. *Id.* at ¶ 7. Accordingly, the  
18 Receiver respectfully requests this Court grant this Motion and approve and  
19 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

## 20 **II. PROCEDURAL BACKGROUND**

21 On September 28, 2015, the Court appointed the Receiver on a temporary  
22 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;  
23 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;  
24 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to  
25 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.  
26 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:  
27 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of  
28 Documents; and (4) Requiring Accountings ("PI Order"), which included

1 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the  
2 TRO and PI Order are collectively referred to as the "Appointment Orders."

3 **III. 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:<sup>1</sup>

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

8 **Purchase Price.** \$900,000.

9 **Closing Date.** Escrow to close within five 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 **Broker's Commission.** By separate agreement, the Receiver has agreed,  
14 subject to Court approval, to pay Broker a commission of 4.5% of the final purchase  
15 price if Broker represents Buyer and 6% if there is a cooperating agent. Pursuant to  
16 that agreement, Broker will compensate cooperating and referring brokers, as  
17 applicable. Broker has invested substantial time into preparing the Property for sale,  
18 locating potential purchasers, marketing the property to them, negotiating terms, and  
19 preparing sale documents. In the proposed transactions, Buyer is represented by  
20 Broker, so the applicable commission is 4.5% of the final purchase price.

21 **IV. ARGUMENT**

22 "The power of a district court to impose a receivership or grant other forms of  
23 ancillary relief does not in the first instance depend on a statutory grant of power  
24 from the securities laws. Rather, the authority derives from the inherent power of a  
25 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369

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<sup>1</sup> The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
2 and efficient administration of the estate by the district court for the benefit of  
3 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
4 of a receiver is authorized by the broad equitable powers of the court, any  
5 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
6 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

20 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
21 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
22 and 'we generally uphold reasonable procedures instituted by the district court that  
23 serve th[e] purpose' of orderly and efficient administration of the receivership for  
24 the benefit of creditors.").

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

#### 28 **A. The Proposed Sale**

It is generally conceded that a court of equity having custody and control of  
property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,  
*supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide  
discretion to determine relief in an equity receivership). "The power of sale



1 necessarily follows the power to take possession and control of and to preserve  
2 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
3 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
4 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.  
5 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of  
6 equity orders property in its custody to be sold, the court itself as vendor confirms  
7 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*  
8 *Receivers* § 487).

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

17 Generally, when a court-appointed receiver is involved, the receiver, as agent  
18 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
19 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
20 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
21 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
22 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.  
23 "In authorizing the sale of property by receivers, courts of equity are vested with  
24 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357  
25 (9th Cir. 1925).

26 **B. 28 U.S.C. § 2001**

27 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of  
28 real property under subsection (a) and specific requirements for private sales of real

1 property under subsection (b). Although both involve unnecessary cost and delay,  
2 the cost and delay of a public sale are significantly less than those for a private sale.  
3 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
4 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
5 public sale; or (2) property may be sold in a private sale, provided that three separate  
6 appraisals have been conducted, the terms are published in a circulated newspaper  
7 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
8 price."). Therefore, by proceeding under Section 2001(a), the receivership estate  
9 can avoid the significant costs and delay of (a) the Court having to appoint three  
10 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

11 The requirements of a public sale under Section 2001(a) are that notice of the  
12 sale be published as proscribed by Section 2002 and a public auction be held at the  
13 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*  
14 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015); *SEC v.*  
15 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007). In terms of  
16 publication of notice, Section 2002 provides:

17 A public sale of realty or interest therein under any order, judgment  
18 or decree of any court of the United States shall not be made without  
19 notice published once a week for at least four weeks prior to the sale  
20 in at least one newspaper regularly issued and of general circulation  
in the county, state, or judicial district of the United States wherein  
the realty is situated.

21 If such realty is situated in more than one county, state, district or  
22 circuit, such notice shall be published in one or more of the counties,  
23 states, or districts wherein it is situated, as the court directs. The  
24 notice shall be substantially in such form and contain such  
description of the property by reference or otherwise as the court  
approves. The court may direct that the publication be made in other  
newspapers.

25 This section shall not apply to sales and proceedings under Title 11  
26 or by receivers or conservators of banks appointed by the  
Comptroller of the Currency.

27 The notice of sale is sufficient if it describes the property and the time, place,  
28 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*



1 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
2 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
3 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
4 of the Receiver, that it has the current ability to consummate the purchase of the  
5 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
6 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

## 7 V. DISCUSSION

8 Here, the proposed sale to Buyer should be approved. The Property has been  
9 fully and properly exposed to the market by Broker through the customary means of  
10 listing the property on the Multiple Listing Service ("MLS"), listing services for  
11 properties such as Loopnet and CoStar, and advertising the property to Broker's own  
12 extensive list of land developers and investors. In response, the Receiver received  
13 multiple inquiries regarding the Property. The Receiver believes the proposed sale  
14 represents the fair market value and will generate the highest and best recovery from  
15 the Property. Seaman Decl., ¶ 8.

16 Moreover, the proposed sale is subject to overbid and public auction. The  
17 Receiver proposes to conduct a public auction consistent with the requirements of  
18 Section 2001(a). Specifically, the Receiver will publish the following notice of the  
19 sale once a week for four weeks in *The Sun*, a newspaper of general circulation in  
20 San Bernardino County:

21 In the action pending in U.S. District Court for the Central District of  
22 California, Case No. 16-CV-07425-RGK-PLA, *Securities and*  
23 *Exchange Commission v. Steve Chen et al.*, notice is hereby given  
24 that the court-appointed receiver will conduct a public auction for the  
25 commercial real property located at 8020 Almond St., in the cities of  
26 Upland and Rancho Cucamonga, California (San Bernardino County  
27 APN's: 0200-061-08, 0200-061-10, 0200-061-27, 0200-061-28,  
28 0200-061-29, 0200-061-30, 0200-061-31, 1061-081-03). Sale is  
subject to Court confirmation after the auction is held. Minimum bid  
price is \$950,000. The auction will take place on August 21, 2017, at  
11:00 a.m. at the property located at the corner of Crestview Place  
and Almond Street (aka 8020 Almond Street), Rancho Cucamonga,  
CA. To be allowed to participate in the auction, prospective  
purchasers must meet certain bid qualification requirements,  
including submitting a signed purchase and sale agreement, an  
earnest money deposit of \$50,000, and proof of funds. All bidders

1 must be qualified by 3:00 p.m. PST on Aug. 14, 2017, by submitting  
2 the required materials to the receiver Thomas Seaman at 3 Park  
3 Plaza, Suite 550, Irvine California, 92614. If interested in qualifying  
as a bidder, please contact Howard Hamlin at (562) 537-5840 or  
howard@hamlingooding.com.

4 *Id.* at ¶ 9.

5 In order to conduct an orderly auction and provide sufficient time for the  
6 publication of notices discussed above, the Receiver will require bidders to complete  
7 the above steps by August 14, 2017 ("Bid Qualification Deadline"), and conduct the  
8 live public auction at the Property at 11:00 a.m. on August 21, 2017. *Id.* at ¶ 10.

9 The Receiver will inform all interested persons of the opportunity to overbid  
10 at the public auction, provided they qualify themselves to bid by the Bid  
11 Qualification Deadline by (a) signing a purchase and sale agreement for the property  
12 on the same terms and conditions as Buyer, but with a purchase price of at least  
13 \$950,000, (b) providing the Receiver with an earnest money deposit of \$50,000, and  
14 (c) providing proof of funds necessary to close the sale transaction in the form of a  
15 current bank statement, cashier's check delivered to the Receiver, or other evidence  
16 deemed sufficient by the Receiver. *Id.* at ¶ 11.

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

26 **A. Additional Relief**

27 Pursuant to its broad equitable powers with respect to the administration of  
28 receivership assets, the Receiver requests that the Court authorize payment from the

1 proceeds of the sale of the Property of the valid liens, taxes, and any other claims on  
2 the property, subject to any objections to such liens, taxes, or claims by the  
3 Receiver.

4 Finally, the Receiver requests authority to pay Broker a commission in the  
5 amount of 4.5% of the final purchase price (or 6% if Buyer is outbid at the auction  
6 by an overbidder who is represented by a cooperating agent). Based on his  
7 extensive experience in real estate transactions, the Receiver believes that such  
8 commission is commercially reasonable and consistent with real estate industry  
9 standards. *Id.* at ¶ 13.

10 **VI. 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, and (2) payment  
13 of a 4.5% commission to Broker from the sale proceeds.

14  
15 Dated: July 12, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS A. SEAMAN

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