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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 SECURITIES AND EXCHANGE
COMMISSION,

18 Plaintiff,

19 v.

20 STEVE CHEN, USFIA, INC.,
ALLIANCE FINANCIAL
21 GROUP, INC., AMAUCTION, INC.,
ABORELL MGMT I, LLC, ABORELL
22 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
23 ESTATE, LLC, ALLIANCE
24 NGN, INC., APOLLO REIT I, INC.,
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 RESIDENTIAL REAL
PROPERTY (GAINSBOROUGH
DRIVE PROPERTY), AND
(B) AUTHORITY TO PAY
BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 8, 2018
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 January 8, 2018, 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 ("Receivership Entities"), hereby moves the Court for (A) approval of sale of residential real property (Gainsborough Drive Property), and (B) authority to pay broker's commission ("Motion").

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, 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: December 7, 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 Through the Receiver's forensic accounting, it was discovered that the
4 Receivership Entities purchased real property located at 2857 Gainsborough Drive,
5 San Marino, California ("Property") – a single-family residence. Specifically, on
6 April 3, 2015, the Property was purchased for approximately \$2,335,000, all of
7 which funds were transferred directly to escrow from the Receivership Entities
8 Amkey, Inc. and Ahome Real Estate LLC. However, title to the Property was taken
9 in the name of Jennifer Zhao, the mother of Defendant Steve Chen's son.
10 Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

11 The Property is approximately 3,015 square feet and has four bedrooms and a
12 pool. Although the Receiver demanded turnover of the Property, Ms. Zhao initially
13 did not comply. The parties, through counsel, later entered into negotiations, at
14 which time Ms. Zhao agreed to turn over the Property. The parties stipulation
15 vesting title to the Property in the Receiver was approved by the Court on
16 September 20, 2017. Dkt. No. 278. Upon obtaining possession of the Property, the
17 Receiver immediately had the Property appraised, which returned a value of
18 \$2,400,000 as of November 9, 2017. *Id.* at ¶ 4.

19 Given that holding and maintaining the Property entails significant carrying
20 costs to the receivership estate, including costs for maintenance, insurance, and
21 property taxes, and that the Property has no business purpose for the benefit of the
22 Receivership Entities, the Receiver listed the Property for sale through licensed
23 broker, Keller Williams Realty ("Broker"). *Id.* at ¶ 5.

24 After reviewing recent comparable sales and similar property listings with
25 Broker, the Receiver listed the Property for sale on November 8, 2017, at
26 \$2,380,000. Broker held three open houses, and over 120 prospective buyers
27 viewed the Property. Four offers were received, the best of which was an all-cash
28 offer for \$2,360,000 from Jianhua Zhang and Yu Wan (collectively "Buyer"). The

1 Receiver countered the offer at \$2,400,000, which Buyer accepted, subject to
2 overbid and Court approval. *Id.* at ¶ 6.

3 In accordance with Buyer's acceptance, the Receiver and Buyer entered into a
4 Residential Purchase Agreement and Joint Escrow Instructions ("Agreement").
5 Among other things, the Agreement specifies the sale is subject to Court approval
6 and is on an "AS IS" basis. The Agreement is attached as Exhibit A to the Seaman
7 Declaration filed herewith. Buyer has recently removed all contingencies for the
8 sale, other than Court approval. *Id.* at ¶ 7.

9 In his reasonable business judgment, the Receiver believes the Agreement,
10 obtained through the commercially reasonable and customary method of listing the
11 property with a licensed broker and after arm's length negotiations with Buyer,
12 reflects the fair market value of the Property. Moreover, the sale is subject to
13 overbid and public auction procedures discussed below. *Id.* at ¶ 8. Accordingly, the
14 Receiver respectfully requests this Court grant this Motion and approve and
15 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

16 **II. PROCEDURAL BACKGROUND**

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

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1 **III. TERMS OF THE AGREEMENT**

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

4 **Court approval.** All aspects of the Agreement and the sale are subject to
5 approval by the Court.

6 **Purchase Price.** \$2,400,000.

7 **Closing Date.** Escrow to close once Court approval of the sale is granted.

8 **Deposit.** Buyers have deposited \$70,800 into escrow, refundable only if the
9 Court does not approve the sale to Buyer.

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

11 **Broker's Commission.** By separate agreement, the Receiver has agreed,
12 subject to Court approval, to pay Broker a commission of 5% of the final purchase
13 price if the purchaser is represented by a different broker, or 4% if the purchaser is
14 also represented by Broker. Pursuant to that agreement, Broker will compensate
15 cooperating and referring brokers, as applicable. Broker has invested substantial
16 time into preparing the Property for sale, locating potential purchasers, marketing
17 the property to them, negotiating terms, and preparing sale documents. In the
18 proposed transaction, Buyer is represented by Broker, so the applicable commission
19 is 4% of the final purchase price.

20 **IV. ARGUMENT**

21 "The power of a district court to impose a receivership or grant other forms of
22 ancillary relief does not in the first instance depend on a statutory grant of power
23 from the securities laws. Rather, the authority derives from the inherent power of a
24 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
25 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
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27 _____
28 ¹ 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 and efficient administration of the estate by the district court for the benefit of
2 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
3 of a receiver is authorized by the broad equitable powers of the court, any
4 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
5 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

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

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

27 **A. The Proposed Sale**

28 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
necessarily follows the power to take possession and control of and to preserve

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

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

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

25 **B. 28 U.S.C. § 2001**

26 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
27 real property under subsection (a) and specific requirements for private sales of real
28 property under subsection (b). Although both involve unnecessary cost and delay,

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

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

16 A public sale of realty or interest therein under any order, judgment
17 or decree of any court of the United States shall not be made without
18 notice published once a week for at least four weeks prior to the sale
19 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.

20 If such realty is situated in more than one county, state, district or
21 circuit, such notice shall be published in one or more of the counties,
22 states, or districts wherein it is situated, as the court directs. The
23 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.

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

26 The notice of sale is sufficient if it describes the property and the time, place,
27 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
28 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to

1 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
 2 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction
 3 of the Receiver, that it has the current ability to consummate the purchase of the
 4 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
 5 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

6 V. DISCUSSION

7 Here, the proposed sale to Buyer should be approved. The Property has been
 8 fully and properly exposed to the market by Broker through the customary means of
 9 listing the property on the Multiple Listing Service ("MLS"), advertising, and
 10 holding open houses. The proposed purchase price is consistent with the appraised
 11 value received at the time of listing the Property (November 2017). The Receiver
 12 believes the proposed sale represents the fair market value and will generate the
 13 highest and best recovery from the Property. Seaman Decl., ¶ 9.

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

18 In the action pending in U.S. District Court for the Central District of
 19 California, Case No. 16-CV-07425-RGK-PLA, Securities and
 20 Exchange Commission v. Steve Chen et al., notice is hereby given
 21 that the court-appointed receiver will conduct a public auction for the
 22 residential real property located at 2857 Gainsborough Drive,
 23 San Marino, California. Sale is subject to Court confirmation after the
 24 auction is held. Minimum bid price is \$2,525,000. The auction will
 25 take place on January 8, 2018, at 11:00 a.m. at the property located at
 26 2857 Gainsborough Drive, San Marino, California. 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 \$70,800, and proof
 of funds. All bidders must be qualified by 3:00 p.m. PT on January 2,
 2018, by submitting the required materials to the Thomas Seaman
 Company at 3 Park Plaza, Suite 550, Irvine California, 92614. If
 interested in qualifying as a bidder, please contact Eva Lin at (626)
 807-6581 or Eva@LinRealtyGroup.com.

27 *Id.* at ¶ 10.

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1 In order to conduct an orderly auction and provide sufficient time for the
2 publication of notices discussed above, the Receiver will require bidders to complete
3 the above steps by January 2, 2018 ("Bid Qualification Deadline"), and conduct the
4 live public auction at the Property at 11:00 a.m. on January 8, 2018. *Id.* at ¶ 11.

5 The Receiver will inform all interested persons of the opportunity to overbid
6 at the public auction, provided they qualify themselves to bid by the Bid
7 Qualification Deadline by (a) signing a purchase and sale agreement for the
8 properties on the same terms and conditions as Buyer, but with a purchase price of
9 at least \$2,525,000, (b) providing the Receiver with an earnest money deposit of
10 \$70,800, and (c) providing proof of funds necessary to close the sale transaction in
11 the form of a current bank statement, cashier's check delivered to the Receiver, or
12 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 12.

13 In the event one or more prospective purchasers qualify themselves to bid, the
14 Receiver will promptly notify the Court and the auction will be conducted at the
15 Property as noted above. Bids will be allowed in increments of \$10,000. The
16 Receiver will then file a notice advising the Court of the result of the auction
17 (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest money
18 deposits provided by bidders who are unsuccessful will be promptly returned to
19 them. If Buyer is outbid at the auction, it will receive a break-up fee of \$10,000 in
20 light of the appraisal, inspection and other expenses it has occurred as "stalking
21 horse" bidder. In the event no prospective purchasers qualify themselves to bid by
22 the Bid Qualification Deadline, the Receiver will notify the Court and seek entry of
23 an order approving the sale to Buyer. *Id.* at ¶ 13.

24 **A. Additional Relief**

25 Pursuant to its broad equitable powers with respect to the administration of
26 receivership assets, the Receiver requests that the Court authorize payment from the
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1 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
2 on 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% of the final purchase price or 5% in the event of a successful
6 overbidder represented by a different broker. Based on his extensive experience in
7 real estate transactions, the Receiver believes that such commission is commercially
8 reasonable and consistent with real estate industry standards. *Id.* at ¶ 14.

9 **VI. CONCLUSION**

10 For the reasons set forth herein, the Receiver respectfully requests entry of an
11 Order approving and authorizing: (1) sale of the Property to Buyer, and (2) payment
12 of a 4% commission to Broker from the sale proceeds or 5% commission in the
13 event of a successful overbidder represented by a different broker.

14

15 Dated: December 7, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Edward Fates

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EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.