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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.

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

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

Date: July 16, 2018
Time: 9:00 a.m.
Ctrm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on July 16, 2018, 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, Thomas A. Seaman ("Receiver"), the Court-
5 appointed permanent receiver for Defendants USFIA, Inc., Alliance Financial
6 Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC,
7 Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo
8 REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation
9 Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates
10 (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of
11 sale of residential real property (Deodar Lane Property), and (B) authority to pay
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 21 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 Dated: June 12, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
Thomas A. Seaman

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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 Entities. In 2013, Steve
6 Chen and his wife Luyang Li purchased the real property located at 409 Deodar
7 Lane, Bradbury, California ("Property") – a single-family residence. The Property
8 is approximately 3,835 square feet and has three bedrooms. Declaration of
9 Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

10 On February 23, 2017, Luyang Li transferred all of her interest in the Property
11 over to Steve Chen. *Id.* at ¶ 4. In March 2017, the Receiver and Mr. Chen
12 stipulated that title to the Property (along with another residential property known as
13 the Balboa property) would be vested in the Receiver as an asset of the receivership
14 estate. Dkt. No. 214. The Court approved the stipulation on March 16, 2017. Dkt.
15 No. 215.

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

21 After reviewing recent comparable sales and similar property listings with
22 Broker, the Receiver listed the Property for sale on or about June 5, 2017, at
23 \$4,188,000. The interest in the property was weak at that list price, so in
24 consultation with Broker, the Receiver reduced the list price to \$3,888,000 in
25 August 2017, then to 3,688,000 in November 2017. In March 2018 the property
26 was taken off the market and re-listed as a new listing at \$3,688,000. Broker held
27 four open houses over that time and showed the property by appointment to
28 42 prospective purchasers. Since June 2017 the Receiver received four offers, none

1 of which came to fruition. In May 2018 the Receiver received an all-cash offer in
2 the amount of \$2,800,000 from R.E.I.S. (LAI) LLC - John Lai ("Buyer"). The
3 Receiver countered the offer at \$2,950,000, which Buyer accepted, subject to
4 overbid and Court approval. *Id.* at ¶ 6.

5 In accordance with Buyer's acceptance, the Receiver and Buyer entered into a
6 Residential Purchase Agreement and Joint Escrow Instructions ("Agreement").
7 Among other things, the Agreement specifies the sale is subject to Court approval
8 and is on an "AS IS" basis. The Agreement is attached as Exhibit A to the Seaman
9 Declaration filed herewith. Buyer has recently removed all contingencies for the
10 sale, other than Court approval. *Id.* at ¶75.

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

18 **II. PROCEDURAL BACKGROUND**

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

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.** \$2,950,000.

7 **Closing Date.** Escrow to close within 14 days of Court approval of the sale.

8 **Deposit.** Buyers have deposited \$150,000 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. In the proposed transaction, Buyer
16 is represented by a different broker, so the applicable commission is 5% of the final
17 purchase price.

18 **IV. ARGUMENT**

19 "The power of a district court to impose a receivership or grant other forms of
20 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

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 of a receiver is authorized by the broad equitable powers of the court, any
2 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
3 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

17 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
18 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
19 and 'we generally uphold reasonable procedures instituted by the district court that
20 serve th[e] purpose' of orderly and efficient administration of the receivership for
21 the benefit of creditors.").

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

25 **A. The Proposed Sale**

26 It is generally conceded that a court of equity having custody and control of
27 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,
28 *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
property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
(9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)

1 (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed.
2 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of
3 equity orders property in its custody to be sold, the court itself as vendor confirms
4 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
5 Receivers § 487).

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

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

23 **B. 28 U.S.C. § 2001**

24 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
25 real property under subsection (a) and specific requirements for private sales of real
26 property under subsection (b). Although both involve unnecessary cost and delay,
27 the cost and delay of a public sale are significantly less than those for a private sale.
28 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)

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

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

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

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

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

24 The notice of sale is sufficient if it describes the property and the time, place,
25 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
26 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
27 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
28 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction

1 of the Receiver, that it has the current ability to consummate the purchase of the
2 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
3 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

4 V. DISCUSSION

5 Here, the proposed sale to Buyer should be approved. The Property has been
6 fully and properly exposed to the market by Broker through the customary means of
7 listing the property on the Multiple Listing Service ("MLS"), advertising, holding
8 open houses, and showing the property to prospective purchasers. The Receiver
9 believes the proposed sale represents the fair market value and will generate the
10 highest and best recovery from the Property. Seaman Decl., ¶ 9.

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

15 In the action pending in U.S. District Court for the Central
16 District of California, Case No. 16-CV-07425-RGK-PLA,
17 Securities and Exchange Commission v. Steve Chen et al.,
18 notice is hereby given that the court-appointed receiver will
19 conduct a public auction for the residential real property located
20 at 409 Deodar Ln., Bradbury, California. Sale is subject to
21 Court confirmation after the auction is held. Minimum bid
22 price is \$3,075,000. The auction will take place on July 16,
23 2018, at 11:00 a.m. at the property located at 409 Deodar Ln.,
24 Bradbury, California. To be allowed to participate in the
25 auction, prospective purchasers must meet certain bid
26 qualification requirements, including submitting a signed
27 purchase and sale agreement, an earnest money deposit of
28 \$150,000, and proof of funds. All bidders must be qualified by
3:00 p.m. PT on July 9, 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 Wendy Kaye at (310) 210-6855 or
wendykaye@verizon.net.

25 *Id.* at ¶ 10.

26 In order to conduct an orderly auction and provide sufficient time for the
27 publication of notices discussed above, the Receiver will require bidders to complete
28

1 the above steps by July 9, 2018 ("Bid Qualification Deadline"), and conduct the live
2 public auction at the Property at 11:00 a.m. on July 16, 2018. *Id.* at ¶ 11.

3 The Receiver will inform all interested persons of the opportunity to overbid
4 at the public auction, provided they qualify themselves to bid by the Bid
5 Qualification Deadline by (a) signing a purchase and sale agreement for the
6 properties on the same terms and conditions as Buyer, but with a purchase price of
7 at least \$3,075,000, (b) providing the Receiver with an earnest money deposit of
8 \$150,000, and (c) providing proof of funds necessary to close the sale transaction in
9 the form of a current bank statement, cashier's check delivered to the Receiver, or
10 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 12.

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

22 **A. Additional Relief**

23 Pursuant to its broad equitable powers with respect to the administration of
24 receivership assets, the Receiver requests the Court authorize payment from the
25 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
26
27

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

1 on the property, subject to any objections to such liens, taxes, or claims by the
2 Receiver.

3 Finally, the Receiver requests authority to pay Broker a commission in the
4 amount of 5% of the final purchase price or 4% in the event of a successful
5 overbidder represented by Broker. Based on his extensive experience in real estate
6 transactions, the Receiver believes that such commission is commercially reasonable
7 and consistent with real estate industry standards. Broker has invested substantial
8 time into preparing the Property for sale, locating potential purchasers, marketing
9 the property to them, negotiating terms, and preparing sale documents. *Id.* at ¶ 14.

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 5% commission to Broker from the sale proceeds or 4% commission in the
14 event of a successful overbidder represented by Broker.

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16 Dated: June 12, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Edward Fates

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EDWARD G. FATES
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THOMAS A. SEAMAN

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