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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
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 AUTHORITY TO
PURSUE CLAIMS AGAINST LI
ZHAO; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: July 30, 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 July 30, 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 (collectively, "Receivership Entities"), hereby moves the Court for authority to pursue claims against Li Zhao ("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: June 27, 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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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks authority for 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"), to pursue fraudulent transfer and disgorgement claims against Li Zhao aka Jennifer Zhao ("Zhao"), the mother of one of Defendant Steve Chen's sons.

Zhao received or was the beneficiary of various payments made by the Receivership Entities during the last four years, including the purchase of a luxury automobile, mortgage payments, utility bills, HOA dues, and property taxes for her home. These payments were made directly to Zhao or to third parties on her behalf and for her benefit, totaling in excess of \$370,000. Based on the Receiver's investigation, the Receivership Entities do not appear to have received any value in exchange for the payments, nor are there any records indicating any legitimate business reasons for the payments. Accordingly, the Receiver seeks authority to pursue claims against Zhao to recover the monies paid to her or to third parties on her behalf, and any other assets she may have received from the Receivership Entities for which no value was provided in exchange.

The Receiver further requests that the Court accept the action to be filed against Zhao as a related action to this action. This Court is familiar with the facts and circumstances of this action and the fraudulent scheme perpetrated by Steve Chen and the Entity Defendants. The Court's familiarity with his background will conserve judicial resources and assist in the efficient resolution of the claims against Zhao. For the same reasons, the Court recently accepted the Receiver's related

1 fraudulent transfer action against Steve Chen's ex-wife, Wei He. Case No. 2:18-cv-
2 00498 RGK-PLA.

3 **II. RELEVANT FACTS**

4 **A. Zhao's Ties To Chen And The Receivership Entities**

5 In the early stages of the receivership, Zhao claimed that funds frozen in a
6 company bank account under the name Ally Investors, LLC ("Ally") were unrelated
7 to the fraudulent scheme perpetrated by Chen and the Entity Defendants and moved
8 to have the funds unfrozen and turned over to her. Dkt. No. 26. The Receiver
9 opposed the motion and presented evidence of the extensive ties and connections
10 between Chen and Zhao/Ally. Dkt. No. 29. The Securities and Exchange
11 Commission opposed the motion as well. Dkt. No. 30.

12 The ties and connections between Chen, on the one hand, and Zhao and Ally,
13 on the other hand, include, but are not limited to, the following:

- 14 • Ally received more than \$1.5 million from Receivership Entity Ahome
15 Real Estate, LLC ("Ahome") in a series of transfers that occurred
16 between March 2012 and September 2015.
- 17 • During the same period of time as Ahome made large transfers to Ally,
18 bank records show Ally made large payments of personal expenses,
19 including, but not limited to, Porsche lease payments, payments to
20 casinos in Las Vegas (in addition to those mentioned below), large
21 credit card bills, school tuition, the Department of Motor Vehicles,
22 Neiman Marcus, Nordstrom, Costco, pool and spa bills, and home
23 cleaning services.
- 24 • Ally made payments to a casino (Caesar's Palace) for an account in
25 Chen's name. In addition, three cashier's checks totaling \$250,000
26 were drawn on an Ally account, at least one of which was delivered to
27 Caesar's Palace by Chen, although the cashier's checks were later
28 returned to Ally.

- 1 • Zhao was the second highest paid employee of the Receivership
2 Entities, although Zhao did not work at the company premises and did
3 not maintain an office there. In addition to amounts she received
4 through Ally, Zhao received large amounts from the Receivership
5 Entities for living expenses, merchandise, tuition payments, and other
6 personal expenses.
- 7 • Chen and Zhao shared a joint bank account at Bank of America, which
8 was also frozen pursuant to the Court's Preliminary Injunction Order
9 ("PI Order").
- 10 • Zhao received title to a home in San Marino, California, known as the
11 Gainsborough Property, that the Receivership Entities purchased. The
12 Receivership Entities also paid the property taxes on the home. In
13 September 2017, Zhao agreed to turn title to the property over to the
14 Receiver so it could be sold for the benefit of the receivership estate.
15 Dkt. Nos. 276, 278.
- 16 • Ally received significant transfers of money from Jet Profit
17 Trading Ltd., Tongyi (HK) Trading Co., and Xiangxin Electronic
18 Trading. These same entities also transferred funds to other
19 Receivership Entities.
- 20 • Bank of America reviewed the TRO, which was faxed to it by the
21 Securities and Exchange Commission ("Commission") the same day it
22 was entered, and promptly determined the Zhao and Ally accounts
23 should be frozen. When the Receiver requested that all balances in
24 accounts of the Receivership Entities be turned over to him, Bank of
25 America determined the balances in the Ally accounts should be turned
26 over along with balances in other Receivership Entity accounts.

27 Dkt. Nos. 29, 29-1.

28

1 After considering the evidence presented, the Court concluded that both Zhao
2 and Ally were affiliated with Chen and the Receivership Entities. Dkt. No. 38. The
3 Court, therefore, denied the motion and declined to unfreeze the Zhao and Ally
4 accounts, with the exception of a Uniform Transfers to Minors Act ("UTMA")
5 account for the benefit of Zhao and Chen's minor child. *Id.* Zhao did not seek
6 reconsideration or otherwise challenge the Court's ruling.

7 **B. The Receivership Entities Paid In Excess Of \$370,000 To**
8 **Zhao Or For Her Benefit During The Last Four Years**

9 As referenced above, in excess of \$370,000 was paid by the Receivership
10 Entities either directly to Zhao or to third parties on her behalf and for her benefit.
11 These payments were made over the course of years and appear to have been used to
12 pay for, among other things, a luxury automobile, school tuition, and other personal
13 expenses. Declaration of Thomas Seaman filed herewith ("Seaman Decl."), ¶ 2.

14 Based on the Receiver's review of the Receivership Entities' books and
15 records, there do not appear to have been any legitimate business transactions
16 underlying these payments, and the Receivership Entities do not appear to have
17 received any value in exchange for these payments. Instead, it appears Defendant
18 Steve Chen simply used funds raised from investors to make gratuitous transfers to
19 Zhao and pay her personal expenses. *Id.* at ¶ 3.

20 It should be noted that the Receiver has not included and does not seek to
21 recover every transfer made to Zhao during the last four years. Zhao has asserted,
22 and the Receiver has accepted, that certain transfers to her were reimbursement of
23 expenses she incurred as an employee of the Entity Defendants. The Receiver,
24 therefore, has removed these transfers from the list and the total he is seeking to
25 recover. *Id.* at ¶ 4.

26 **A. The Receiver's Demands**

27 Through his counsel, the Receiver has advised Zhao that he intends to seek
28 recovery of over \$370,000 in transfers to her or for her benefit and that the Receiver

1 would file an action to recover such transfers if the funds are not returned or a
2 settlement is not reached. Declaration of Edward G. Fates ("Fates Decl."), ¶ 3. To
3 date, Zhao has not agreed to turn over any funds and a settlement has not been
4 reached. *Id.* Based on the information and evidence gathered to date, the Receiver
5 believes there are strong fraudulent transfer and disgorgement claims against Zhao
6 for recovery of the funds she received. Accordingly, the Receiver respectfully
7 requests the Court grant him authority to bring a separate action to pursue claims
8 against Zhao to recover the monies paid to her or for her benefit, so that such funds
9 may be recovered and distributed to the investor victims of the fraudulent scheme.
10 The Receiver further requests that the Court accept the ancillary action against Zhao
11 as a related action in order to conserve judicial and receivership estate resources.

12 **III. ARGUMENT**

13 "The power of a district court to impose a receivership or grant other forms of
14 ancillary relief does not in the first instance depend on a statutory grant of power
15 from the securities laws. Rather, the authority derives from the inherent power of a
16 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
17 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
18 and efficient administration of the estate by the district court for the benefit of
19 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
20 of a receiver is authorized by the broad equitable powers of the court, any
21 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
22 953 F.2d 1560, 1569 (11th Cir. 1992).

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

27 A district court's power to supervise an equity receivership
28 and to determine the appropriate action to be taken in the
administration of the receivership is extremely broad. The
district court has broad powers and wide discretion to

1 determine the appropriate relief in an equity receivership.
2 The basis for this broad deference to the district court's
3 supervisory role in equity receiverships arises out of the
4 fact that most receiverships involve multiple parties and
5 complex transactions. A district court's decision
6 concerning the supervision of an equitable receivership is
7 reviewed for abuse of discretion.

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

13 Here, this Court has empowered the Receiver to, among other things, "employ
14 attorneys, accountants, and others to investigate and, where appropriate, to institute,
15 pursue, and prosecute all claims and causes of action . . . which may now or
16 hereafter exist as a result of the activities of . . . the Entity Defendants and their
17 subsidiaries and affiliates . . ." *See* Dkt. No. 13, p. 13. Based on the circumstances
18 described herein, the Receiver believes it is appropriate to pursue claims against
19 Zhao to recover funds she received from the Receivership Entities for the benefit of
20 the receivership estate, and thus respectfully requests the Court grant him authority
21 to do so.

22 **A. The Funds Zhao Received Are Subject To Disgorgement**

23 Under California's Uniform Fraudulent Transfer Act ("CUFTA"), Cal. Civ.
24 Code § 3439 *et seq.*, a transfer is subject to avoidance and recovery when made with
25 (1) actual intent to defraud, or (2) constructive fraudulent intent based on the lack of
26 reasonably equivalent value provided in exchange. Cal. Civ. Code § 3439.04(a).
27 Intent to defraud is presumed when the payments were made from entities operating
28 a Ponzi scheme. *In re Cohen*, 199 B.R. 709,717 (B.A.P. 9th Cir. 1996); *see also*
Donell v. Kowell, 533 F.3d 762, 767 (9th Cir. 2007); *In re AFI Holding, Inc.*,
525 F.3d 700, 704 (9th Cir. 2008). Federal equity receivers have standing to pursue

1 fraudulent transfer claims on behalf of entities in receivership. *Donell*, 533 F.3d at
2 776-777.

3 Here, Zhao received, either directly or indirectly, in excess of \$370,000 from
4 the Receivership Entities. These payments do not appear to have been made for any
5 legitimate business purposes, and the Receivership Entities do not appear to have
6 received any value in return.

7 Accordingly, based on the evidence the Receiver has obtained and reviewed,
8 and further evidence that may be developed in discovery concerning the fraudulent
9 nature of these transactions, the Receiver believes meritorious claims exist against
10 Zhao for avoidance and recovery of fraudulent transfers. The Receiver further
11 believes that additional information supporting such claims will likely be found
12 through discovery and thus respectfully requests this Court exercise its broad
13 equitable discretion and authorize the Receiver to file a separate action to pursue
14 such claims.

15 **B. The Receiver Will Endeavor To Keep Costs To A Minimum**
16 **And Continue To Evaluate The Likely Benefit To The**
17 **Receivership Estate**

18 The Receiver has consulted with his counsel, Allen Matkins, and believes the
19 legal fees for the action could be as low as \$15,000 in the event of a prompt
20 settlement and as much as \$250,000 in the event of a full trial. The Receiver
21 believes a full trial is highly unlikely and the case will likely be resolved via
22 settlement or summary judgment with legal fees of \$100,000 or less. As with all
23 matters, the Receiver and Allen Matkins will make every effort to minimize
24 administrative expenses associated with the proposed action. *Seaman Decl.*, ¶ 5.

25 Throughout the litigation, the Receiver and Allen Matkins will continue to
26 monitor the costs and likely net benefit to the receivership estate. In his discretion,
27 the Receiver may conduct asset investigations to aid in assessing collectability of a
28 judgment. *Id.* at ¶ 6.

1 After reviewing the available evidence, weighing the merits of the proposed
2 claims against Zhao, and assessing the anticipated costs of litigation and likelihood
3 of success and collectability, the Receiver believes, in his reasonable business
4 judgment, that it is in the best interest of the receivership estate to pursue such
5 claims, and respectfully requests the Court issue an order authorizing him to do so.
6 *Id.* at ¶ 7.

7 **IV. CONCLUSION**

8 Based on the foregoing, the Receiver respectfully requests an order
9 authorizing him to pursue fraudulent transfer and similar disgorgement claims
10 against Zhao. The Receiver further requests that the Court accept the action to be
11 filed against Zhao as a related action to this action.

12
13 Dated: June 27, 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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