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

26 Defendants.
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Case No. 2:15-CV-07425-RGK-

**MOTION FOR ORDER TO EXTEND
CLAIMS SUBMISSION DEADLINE
[BAR DATE]**

Date: July 30, 2018

Time: 9:00 a.m.

Ctrm: 850

Judge: Hon. R. Gary Klausner

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**
2 **PLEASE TAKE NOTICE** that on July 30, 2018 at 9:00 a.m. in
3 Courtroom 850 of the above-entitled Court, located at 255 E. Temple Street,
4 Los Angeles, California, Thomas A. Seaman (“Receiver”), the Court-appointed
5 permanent receiver for Defendants USFIA, Inc., Alliance Financial Group, Inc.,
6 Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell
7 REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc.,
8 Apollo REIT II, LLC, Amkey, Inc., US China Consultation Association, Quail
9 Ranch Golf Course, LLC, and their subsidiaries and affiliates (collectively,
10 “Receivership Entities”), will and hereby does move the Court for a 90-day
11 extension of the Court-ordered June 29, 2018 deadline to submit investor claims to
12 the Receiver.

13 This Motion is made on the grounds that, for a variety of reasons discussed
14 further below, the investor response rate to claim notices and the number of claims
15 received from investors to date is *substantially lower* than anticipated. The
16 Receiver's analysis of the bank and other records of the Receivership Entities
17 indicate that there were tens of thousands of victims, however, as of now, only a few
18 thousand claims have been received. The Receiver requests an extension of the
19 claims submission deadline in order to address the low response rate in several
20 ways, including further e-mail notices, a telephone line for investor calls, and other
21 outreach efforts to contact and encourage investors with losses from the
22 Receivership Entities to submit claims.

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1 **Procedural Requirements:** If you oppose this Motion, you are required to
2 file your written opposition with the Office of the Clerk, United States District
3 Court, 255 East Temple Street, Los Angeles, California 90012-3332 and serve the
4 same on the undersigned not later than 21 calendar days prior to the hearing. This
5 Motion is made following the conference of counsel pursuant to L.R. 7-3.

6 Dated: July 2, 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 AND BACKGROUND FACTS**

3 On March 7, 2018, the Court granted the Receiver's Motion for Order
4 (1) Setting Claims Bar Date; (2) Approving Claim Forms; and (3) Approving
5 Engagement of Third Party Claims Administrator ("Claims Motion"). Dkt. No. 299.
6 The Order ("Claims Order") authorized the Receiver to engage Epiq Systems - Class
7 Action & Mass Tort Solutions, Inc. ("Epiq") and Berkeley Research Group ("BRG")
8 as claims administrators and set the deadline to submit claims to the Receiver as
9 June 29, 2018 ("Claims Bar Date"). Dkt. No. 307.

10 Pursuant to the process set forth in the Claims Motion, investors and other
11 creditors were to have at least 60 days to submit claims to the Receiver. The claims
12 process information, the proof of claims form, and the Claims Portal (as defined
13 below), was presented to investors and creditors in both English and Mandarin.
14 Following entry of the Claims Order, the Receiver and Epiq activated the electronic
15 claims submission portal ("Claims Portal") and electronically transmitted notices
16 and information regarding the claims process to all known investor and non-investor
17 claimants. Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 4.

18 On April 6, 2018, the claims notice was published in the USA Today and the
19 Financial Times. The Receiver also mailed physical notices to any other known
20 creditor of the Receivership Entities (approximately 220 notices), and Epiq and the
21 Receiver sent email blasts to the email addresses in the Receiver's possession
22 believed to be associated with investors. Ultimately, the unreturned number of
23 original email notices totaled 43,062. The notices (physical and email) included
24 instructions on how to submit claims to the Receiver and the emails contained a link
25 to the Claims Portal, which had been activated prior to the physical and email
26 notices being sent. A notice and link to the Claims Portal were also posted at the top
27 of the receivership website used to provide other case information to investors.
28 Seaman Decl. ¶ 5.

1 To date, approximately 1,740 claims have been submitted. This number is
2 substantially lower than anticipated based on the number of unique email addresses
3 and the number of emails that were actually opened from the Receiver's initial email
4 blast and based upon estimates derived from an analysis of the bank and other
5 records of the Receivership Entities. Based on the statistics from the initial email
6 blast and company records, the Receiver anticipated receiving 15,000 to 30,000
7 claims. The reasons for the uncertainty regarding the estimated number of potential
8 investor claims are many, but primarily stem from the lack of a complete or
9 trustworthy company database, the location of many investors outside the United
10 States, and the fact that a significant number of investors gave their money to other
11 individuals ("Leaders") who pooled the funds with those of other investors before
12 investing with the Receivership Entities. Seaman Decl. ¶ 6.

13 As of June 25, 2018, Epiq had received over 250 email messages sent to the
14 email address dedicated to questions about claims. The Receiver had received over
15 500 additional email messages sent directly to his staff. From these email messages
16 and the Receiver's observation of the process, certain reasons and themes for
17 investors not submitting claims have emerged. The most common reasons are as
18 follows:

19 1) **Technical and Other Claims Portal Issues** – Epiq has experienced
20 significant issues with regard to Chinese users' access to the claims portal.
21 Specifically, in 2010 Google pulled out of the Chinese market due to conflicts with
22 the Chinese government over censorship. Epic's claims portal was modified in late
23 2017 to use Google reCaptcha, a security feature to prevent denial of service and
24 other attacks resulting from automated code accessing the website. As a result, the
25 claim registration page was no longer functional in China. The reCaptcha feature is
26 being replaced with BotDetect, a security feature that is not blocked in China. This
27 was released on Thursday, June 28, 2018, and will resolve the registration issues for
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1 Chinese investors.¹ Moreover, the Receiver is concerned that some investors may
2 believe the Claims Portal is another scam, an unauthorized attempt to get their
3 personal information, or that the government will be watching them if they submit a
4 claim. This latter concern is likely to be particularly applicable to undocumented
5 immigrant investors.

6 2) **Steve Chen** – Based upon communications with investors, it appears that
7 either Steve Chen or those actively involved with him have spread misinformation
8 to investors resulting in at least 50 requests by investors to withdraw their claims. In
9 other words, investors have submitted legitimate claims and then asked the Receiver
10 to withdraw or return their claim forms. When the Receiver questioned these
11 individuals, investors indicated that they believed Defendant Steve Chen and the
12 USFIA program will continue and they will recover their original investment
13 through future operations. The Receiver is concerned that Mr. Chen or the so-called
14 "Leaders" who also acted as sales agents are spreading false information and may be
15 engaging in new sales activities related to a new scheme.

16 3) **Difficulty with Claims Process** – some investors are having problems
17 submitting claims for one or more of the following reasons:

- 18 • They do not have or do not remember their investment information.
- 19 • They think the Receiver should have their information and they should
20 not have to provide it.
- 21 • They do not understand the instructions for submitting claims.
- 22 • They do not have access to a computer or scanner to submit documents.

23 Seaman Decl. ¶ 7.

24 It is unclear whether the Receiver can convince those investors who believe in
25 Steve Chen's vision or who are fearful of being watched by the government to
26 change their minds and submit claims, however, the Receiver believes that further

27 ¹ The Receiver was not aware of this issue when it contracted with Epiq and only
28 learned of this issue several weeks ago.

1 outreach and instruction will generate many more claims. The Receiver believes all
2 reasonable and cost-effective efforts should be made to contact and encourage
3 investors to submit claims. Seaman Decl. ¶ 8.

4 The Receiver is holding approximately \$50 million in cash and expects to
5 recover additional amounts, including through the sale of the remaining real
6 property assets as well as pending recovery actions and collection efforts. The
7 Receiver anticipates providing a very meaningful recovery to investors with allowed
8 claims. Seaman Decl. ¶ 9. Indeed, the primary purpose of the receivership is to
9 provide as much recovery as possible to as many defrauded investors as possible.

10 Accordingly, after consulting with Epiq, and counsel, the Receiver
11 recommends the following actions as the most efficient and effective means to
12 increase the number of investor claims submitted:

- 13 • Extend the Claims Bar Date by approximately 90 days to October 1,
14 2018, to allow investors more time to submit claims. The claim form
15 requires that investors submit supporting documentation. Although the
16 original 60 days should have been enough time to gather such
17 documentation, the emails received to date indicate that a lack of
18 supporting documentation is an issue for many investors.
- 19 • The Receiver will then have an additional 45 days to validate and
20 communicate with claimants in order to remedy or address issues with
21 regard to deficient claims.
- 22 • Send email blasts to investors every 7 to 10 days to not only remind
23 investors to submit a claim, but also to address common inquiries and
24 themes in investor correspondence. Although each repeat email blast
25 may not generate a significant bump in the number of claims, they are
26 still a very efficient way of reminding and encouraging investors to
27 submit claims. The cost of each email blast is approximately \$200 to
28 \$400, depending on the amount of translation necessary.

- 1 • Establish a message center with voice mail in multiple languages for
2 investors to call in and ask questions. Calls will then be returned in an
3 efficient manner. Investors will be guided through the claims process,
4 and therefore will gain confidence in the claims process. With a
5 message system in place, the receivership will be able to control the
6 costs by addressing the needs of the diverse number of languages
7 without the expense of having live telephone operators. Investors will
8 be able to leave messages and have their calls returned in English,
9 Spanish, French, Mandarin, Korean, Malaysian, or Vietnamese. The
10 English and Mandarin calls will go directly to the Receiver's staff and
11 calls in all other languages will be handled by Epiq. Epiq's estimated
12 cost for the message center for 90 days is approximately \$20,000-
13 \$30,000, depending on the volume of calls. If the Court approves, the
14 next email blast will announce to investors that the deadline to submit
15 claims has been extended and the message center is open.
- 16 • The Receiver has been and will continue to accept hard copy claims by
17 mail or email. The Receiver will also attempt to find physical mailing
18 addresses from company records in a further effort to reach investors.
19 The Receiver also recommends scheduling an investor meeting to
20 inform investors of the claims process and to assist investors that are
21 having difficulties or have questions about the claims process. The
22 meeting would be in the San Gabriel Valley area of Los Angeles, near
23 the Receivership Entities' former offices.

24 *Id.*

25 The Receiver estimates the total expenses associated with these efforts will be
26 approximately \$30,000-\$35,000. The Receiver expects that Epiq's total fees for
27 Phase I of the claims process will come in under the budgeted cap for Phase I. The

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1 costs of the additional outreach efforts described herein, however, were not included
2 in the Phase I budget. Seaman Decl. ¶ 10.

3 **II. ARGUMENT**

4 **A. District Courts Have Broad Equitable Powers to Administer**
5 **Receiverships**

6 The power of a district court to impose a receivership or grant other forms of
7 ancillary relief does not in the first instance depend on a statutory grant of power
8 from the securities laws. Rather, the authority derives from the inherent power of a
9 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
10 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
11 and efficient administration of the estate by the district court for the benefit of
12 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
13 of a receiver is authorized by the broad equitable powers of the court, any
14 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
15 953 F.2d 1560, 1569 (11th Cir. 1992).

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

20 A district court's power to supervise an equity receivership and
21 to determine the appropriate action to be taken in the
22 administration of the receivership is extremely broad. The
23 district court has broad powers and wide discretion to determine
24 the appropriate relief in an equity receivership. The basis for
25 this broad deference to the district court's supervisory role in
26 equity receiverships arises out of the fact that most
27 receiverships involve multiple parties and complex transactions.
28 A district court's decision concerning the supervision of an
equitable receivership is reviewed for abuse of discretion.

26 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
27 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
28 and 'we generally uphold reasonable procedures instituted by the district court that

1 serve th[e] purpose' of orderly and efficient administration of the receivership for
2 the benefit of creditors."). Accordingly, this Court has broad equitable powers and
3 discretion in determining the administration of this receivership estate.

4 Here, the Court has discretion to extend the Claims Bar Date and authorize
5 the Receiver to take the proposed actions described above to encourage investors to
6 submit claims. The Receiver believes this relief will advance the goal of providing
7 a recovery from the receivership estate to as many defrauded investors as possible.
8 The Receiver has considered many different options and strategies for trying to
9 increase the investor response rate and believes the actions proposed herein are the
10 best in terms of having the maximum impact with the least consumption of
11 receivership estate resources.

12 The Receiver's counsel has contacted counsel for the Commission, who has
13 no opposition to the proposed extension. It is important that the Receiver take
14 action to address the low response rate as soon as possible so as not to unduly delay
15 the claims process. Accordingly, the requested relief is necessary and appropriate
16 under the circumstances.

17 **III. CONCLUSION**

18 For the reasons set forth herein, the Receiver requests entry of an order
19 extending the Claims Bar Date by approximately 90 days to October 1, 2018, and
20 authorizing him to take the actions described above to increase the number of
21 investor claims submitted.

22 Dated: July 2, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

23 By: /s/ Edward Fates
24 EDWARD G. FATES
25 Attorneys for Receiver
26 THOMAS A. SEAMAN
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