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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

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.
27

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

**RECEIVER THOMAS A. SEAMAN'S
MOTION FOR ORDER TO
FURTHER EXTEND CLAIMS
SUBMISSION DEADLINE**

Date: October 29, 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 October 29, 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 95-day
11 extension of the Court-ordered October 1, 2018 deadline to submit investor claims
12 to January 4, 2019.

13 This Motion is made on the grounds that, as a result of ongoing technical
14 issues, the geographic diversity and distribution of likely claimants, and interference
15 by so-called leader parties in the process, the Receiver has been unable to fully
16 implement all of the proposed actions described in the Motion for Order to Extend
17 Claims Submission Deadline (“Extension Motion”). See Docket No. 314, pages
18 4-5. While significant progress has been made, the Receiver seeks to increase the
19 response rate to claim notices and the number of claims received from investors. As
20 previously reported, the Receiver's analysis of the bank and other records of the
21 Receivership Entities, and his recovery of over \$50 million, strongly suggest that
22 there were 15,000 to 30,000 investor claimants. As of now, the Receiver has
23 received approximately 3,800 claims.

24 The Receiver requests an extension of the claims submission deadline in order
25 to fully implement the previously identified strategies for increasing responses,
26 including further e-mail notices, a telephone line for investor calls, and a more
27 vigorous outreach effort to contact and encourage investors with losses to submit
28 claims.

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: October 1, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ David Zaro

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DAVID R. ZARO
Attorneys for Receiver
THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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"). Docket
6 ("Dkt.") Dkt. No. 299. The Order ("Claims Order") authorized the Receiver to
7 engage Epiq Systems - Class Action & Mass Tort Solutions, Inc. ("Epiq") and
8 Berkeley Research Group ("BRG") as claims administrators and set the deadline to
9 submit claims to the Receiver as June 29, 2018 ("Claims Bar Date"). Dkt. No. 307.
10 Pursuant to the process set forth in the Claims Motion, investors and other creditors
11 were to have at least 60 days to submit claims to the Receiver. The Receiver
12 anticipated being able to promptly establish the Claims Portal (as defined below),
13 for investors and creditors in both English and Mandarin, and to reach the vast
14 majority of possible investors via email or through publication of the notice.

15 Following entry of the Claims Order, the Receiver and Epiq attempted to
16 activate the electronic claims submission portal ("Claims Portal") and electronically
17 transmit notices and information regarding the claims process to all known investor
18 and non-investor claimants. Declaration of Thomas A. Seaman filed herewith
19 ("Seaman Decl."), ¶ 3-6. Technical problems delayed the implementation of the
20 Claims Portal until June 28, 2018. *Id.* As a result, the Receiver requested an
21 extension of the Claims Bar Date to October 1, 2018. The Court entered the order
22 extending the bar date on August 23, 2018 ("Extension Order.") Dkt. No. 327.

23 Since the entry of the Extension Order, significant progress has been made,
24 however, the Receiver strongly believes that further time is required to fully
25 implement and take advantage of the international call center, investor email blasts
26 and the Receiver's outreach efforts. Seaman Decl. ¶¶ 6-8, 10. As discussed below,
27 the proposed call center has only recently been opened and become fully

28

1 operational. Seaman Decl. ¶ 7. Moreover, the Receiver was not able to commence
2 the bi-weekly email blasts until early September, 2018.

3 In light of the obstacles faced in communicating with investors, the difficulty
4 in gaining the trust of the investors, and the goal of distributing all of the recovered
5 money to investors, the Receiver believes that further extension of the bar date until
6 January 4, 2019 is warranted. Seaman Decl. ¶¶ 3, 10.

7 **II. BACKGROUND AND PROPOSED ACTIONS**

8 On July 2, 2018, the Receiver filed a Motion For Order To Extend Claims
9 Submission Deadline ("Extension Motion"). Dkt. No. 314. The Receiver requested
10 an extension for 90 days until October 1, 2018 in order to address technology issues
11 that limited communications with overseas investors and prevented investors from
12 submitting claims via the Claims Portal. At the time, the Receiver had learned that
13 over 40,000 email notices had not been received by potential investors and that Epiq
14 had identified problems overseas that effectively blocked Receiver-Investor
15 communications. Seaman Decl. ¶ 3. As a result, only 1,740 claims out of an
16 anticipated 15,000 to 30,000 claims,¹ were received. Seaman Decl. ¶¶ 3, 9.

17 To address these issues, in addition to extending the Claims Bar Date, the
18 Receiver recommended the following in the Extension Motion:

- 19 • Send email blasts to investors every 7 to 10 days to not only remind
20 investors to submit a claim, but also to respond to common inquiries
21 and themes in investor correspondence. As previously noted, the cost
22 of each email blast is approximately \$200 to \$400, depending on the
23 amount of translation necessary.

24
25 ¹ The reasons for the uncertainty regarding the estimated number of potential
26 investor claims are many, but primarily stem from the lack of a complete or
27 trustworthy company database, the location of many investors outside the United
28 States, and the fact that a significant number of investors gave their money to
other individuals ("Leaders") who pooled the funds with those of other investors
before investing with the Receivership Entities. .

- 1 • Establish an international call center where investors could leave
2 voicemail questions in multiple languages. Calls are then returned and
3 Investors are guided through the claims process. Investors are able to
4 leave messages and have their calls returned in English, Spanish,
5 French, Mandarin, Korean, Malaysian, or Vietnamese. The English
6 and Mandarin calls will go directly to the Receiver's staff and calls in
7 all other languages will be handled by Epiq.
- 8 • Schedule an investor meeting to inform investors of the claims process
9 and to assist investors that are having difficulties or have questions
10 about the claims process. The meeting has now been set for
11 October 16, 2018 at 2:00 p.m. at the Embassy Suites Hotel in Arcadia,
12 California near the Receivership Entities' former offices.

13 Seaman Decl. ¶ 3.

14 To the extent that the Receiver has been able to pursue these strategies over
15 the past month since the Extension Order was entered, they appear to be working.
16 To date, over 3,800 claims have been received and over 250 voicemails have been
17 received via the call center. Seaman Decl. ¶ 9. The Receiver believes that there are
18 many more investors with claims who can still be reached because, even with delays
19 in opening the international call center, which did not go live until September 19,
20 2018,² the Receiver has already received 250 calls.³ Seaman Decl. ¶ 6.

21 Similarly, the first email blast to investors regarding the extended bar date
22 was sent on September 5, 2018, with additional emails sent on September 18, 2018
23 and September 21, 2018. The Receiver believes that these communications
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26 ² The lines for Japan, Spain and France were not live until September 20, 2018.

27 ³ The Receiver did not pay Epiq to establish the international call center until after
28 entry of the Extension Order on August 23, 2018. It took Epiq approximately 2
weeks to set up the international call center.

1 introduced investors to the call center, which in turn induced them to pursue their
2 claims.

3 The Receiver also continues to work to overcome misinformation that
4 Mr. Chen or the so-called "Leaders" (who also acted as sales agents) have spread to
5 investors regarding the claims process. As previously reported, investors were told
6 to not file claims or, in some cases, to withdraw claims. It is still unclear whether
7 the Receiver can convince all investors who believe in Steve Chen's vision to submit
8 claims, but the Receiver believes that the call center, email blasts, and outreach
9 efforts, such as the hotel meeting, will generate many more claims.

10 The Receiver is holding approximately \$50 million in cash and expects to
11 recover additional amounts, including through the sale of the remaining real
12 property assets as well as pending recovery actions and collection efforts.

13 Accordingly, the Receiver anticipates providing a very meaningful recovery to
14 investors with allowed claims. Seaman Decl. ¶ 10. As such, the Receiver believes
15 that it is worthwhile to spend time and money to continue the previously proposed
16 efforts to reach the investors, gain their trust and encourage them to file claims.

17 The Receiver believes he can complete these additional steps within the same
18 \$30,000 to \$35,000 cost estimated he provided in connection with his first motion to
19 extend the claims submission deadline. Seaman Dec. ¶ 11. Even with these
20 changes to the process and bar date, the Receiver expects that Epiq's total fees for
21 Phase I of the claims process will come in under the budgeted cap for Phase I. The
22 costs of the additional outreach efforts described herein, however, were not included
23 in the Phase I budget. Seaman Decl. ¶ 11.

24 **III. ARGUMENT**

25 **A. District Courts Have Broad Equitable Powers to Administer** 26 **Receiverships**

27 The power of a district court to impose a receivership or grant other forms of
28 ancillary relief does not in the first instance depend on a statutory grant of power

1 from the securities laws. Rather, the authority derives from the inherent power of a
2 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
3 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
4 and efficient administration of the estate by the district court for the benefit of
5 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
6 of a receiver is authorized by the broad equitable powers of the court, any
7 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
8 953 F.2d 1560, 1569 (11th Cir. 1992).

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

13 A district court's power to supervise an equity receivership and
14 to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad. The
16 district court has broad powers and wide discretion to determine
17 the appropriate relief in an equity receivership. The basis for
18 this broad deference to the district court's supervisory role in
19 equity receiverships arises out of the fact that most
20 receiverships involve multiple parties and complex transactions.
21 A district court's decision concerning the supervision of an
22 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."). Accordingly, this Court has broad equitable powers and
24 discretion in determining the administration of this receivership estate.

25 Here, the Court has discretion to extend the Claims Bar Date and authorize
26 the Receiver to take the proposed actions described above to encourage investors to
27 submit claims. The Receiver believes this relief will advance the goal of providing
28 a recovery from the receivership estate to as many defrauded investors as possible.

1 The Receiver continues to consider different options and strategies to increase the
2 investor response rate and believes the actions proposed herein will have the
3 maximum impact with the least consumption of receivership estate resources.

4 The Receiver's counsel has contacted counsel for the Commission, who has
5 no opposition to the proposed extension. The Receiver holds over \$50 million in
6 recovered assets and continues to recover more assets. As such, it is vital to reach
7 these investors so that they can recover their losses. Accordingly, the requested
8 relief is necessary and appropriate under the circumstances.

9 **IV. CONCLUSION**

10 For the reasons set forth herein, the Receiver requests entry of an order:

- 11 • Extending the claims bar date by approximately 95 days to January 4,
12 2019;
- 13 • Extending the time for the Receiver to validate and communicate with
14 claimants in order to remedy or address issues with regard to deficient
15 claims by 45 days to February 18, 2019; and
- 16 • Authorizing the Receiver to take actions recommended herein.

17
18 Dated: October 1, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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21 By: /s/ David Zaro

DAVID R. ZARO
Attorneys for Receiver
THOMAS A. SEAMAN

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