

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
TIM C. HSU (BAR NO. 279208)
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
thsu@allenmatkins.com

6 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
7 EDWARD G. FATES (BAR NO. 227809)
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
12 Thomas A. Seaman

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 (CLUB VISTA DRIVE
PROPERTY), AND (B) AUTHORITY
TO PAY BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: November 19, 2018
Time: 9:00 a.m.
Ctrm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on November 19, 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 (Club Vista Drive 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.

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Dated: October 12, 2018

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 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 2010,
6 Steamfont Investment Group LLC ("Steamfont"), an affiliate of the named
7 Defendants, purchased the real property located at 2315 Club Vista Drive, Glendora,
8 California ("Property") – a single-family residence – for \$630,000. The Property is
9 approximately 2,339 square feet and has four bedrooms. The Receiver learned of
10 Steamfont's purchase of the Property through his investigation and took possession
11 and control of the Property in 2018 pursuant to the Court's orders. Declaration of
12 Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

13 Given that holding and maintaining the Property entails significant carrying
14 costs to the receivership estate, including costs for maintenance, insurance, and
15 property taxes, and that the Property has no business purpose for the benefit of the
16 Receivership Entities, the Receiver listed the Property for sale through licensed
17 broker, Lin Realty Group – Keller Williams ("Broker"). *Id.* at ¶ 4.

18 After reviewing recent comparable sales and the appraisal of \$850,000, and
19 similar property listings with Broker, the Receiver listed the Property for sale in
20 August 2018 at \$800,000. The Receiver staged the interior of the property to
21 improve the appearance. Broker held 4 open houses. Approximately 200 people
22 attended the open houses. Approximately 50 prospective toured the Property. The
23 Receiver received six offers, ranging from \$800,000 to \$851,000. The Receiver
24 made a counter calling for the all bidders to submit a "best and final" offer. *Id.* at
25 ¶ 5.

26 On September 20, 2018, the Receiver and Xiao Yu ("Buyer") agreed on a
27 purchase price of \$861,000 and executed a Residential Purchase Agreement and
28 Joint Escrow Instructions ("Agreement"). Among other things, the Agreement

1 specifies the sale is subject to Court approval and is on an "AS IS" basis. The
2 Agreement is attached as Exhibit A to the Seaman Declaration filed herewith.
3 Buyer has recently removed all contingencies for the sale, other than Court
4 approval. *Id.* at ¶ 6.

5 In his reasonable business judgment, the Receiver believes the Agreement,
6 obtained through the commercially reasonable and customary method of listing the
7 property with a licensed broker and after arm's length negotiations with Buyer,
8 reflects the fair market value of the Property. Moreover, the sale is subject to
9 overbid and public auction procedures discussed below. *Id.* at ¶ 7. Accordingly, the
10 Receiver respectfully requests this Court grant this Motion and approve and
11 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

12 **II. PROCEDURAL BACKGROUND**

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

23 **III. TERMS OF THE AGREEMENT**

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

27 ¹ The terms of the Agreement are summarized herein for convenience only. In the
28 event of any conflict between the Agreement and the summary provided herein,
the Agreement governs and controls.

1 **Court approval.** All aspects of the Agreement and the sale are subject to
2 approval by the Court.

3 **Purchase Price.** \$861,000.

4 **Closing Date.** Escrow to close within 14 days of Court approval.

5 **Deposit.** Buyer had deposited \$25,000 into escrow, refundable only if the
6 Court does not approve the sale to Buyer.

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

8 **Break-Up Fee.** In the event a qualified overbid is received and Buyer is
9 outbid at the auction, Buyer will be paid a break-up fee of \$7,500 as both an
10 incentive to act as the "stalking horse" bidder and compensation for due diligence
11 costs.

12 **Broker's Commission.** By separate agreement, the Receiver has agreed,
13 subject to Court approval, to pay Broker a commission of 5% of the final purchase
14 price if the purchaser is represented by a different broker, or 4% if the purchaser is
15 also represented by Broker. Pursuant to that agreement, Broker will compensate
16 cooperating and referring brokers, as applicable. In the proposed transaction, Buyer
17 is represented by a different broker, so the applicable commission is 5% of the final
18 purchase price.

19 **IV. ARGUMENT**

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

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

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

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

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

24 **A. The Proposed Sale**

25 It is generally conceded that a court of equity having custody and control of
26 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,
27 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
28 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)
(*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.

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

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

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

22 **B. 28 U.S.C. § 2001**

23 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
24 real property under subsection (a) and specific requirements for private sales of real
25 property under subsection (b). Although both involve unnecessary cost and delay,
26 the cost and delay of a public sale are significantly less than those for a private sale.
27 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
28 ("Section 2001 sets out two possible courses of action: (1) property may be sold in

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

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

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

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

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

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

1 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
2 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

3
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., ¶ 8.

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 2315 Club Vista Dr., Glendora, California. Sale is subject to
21 Court confirmation after the auction is held. Minimum bid
22 price is \$911,000. The auction will take place on
23 November 19, 2018, at 11:00 a.m. at the property located at
24 2315 Club Vista Dr., Glendora, California. To be allowed to
25 participate in the auction, prospective purchasers must meet
26 certain bid qualification requirements, including submitting a
27 signed purchase and sale agreement, an earnest money deposit
28 of \$25,000, and proof of funds. All bidders must be qualified
by 3:00 p.m. PST on November 12, 2018, by submitting the
required materials to the Thomas Seaman at 3 Park Place, Suite
550, Irvine California, 92614. If interested in qualifying as a
bidder, please contact Eva Lin at (626) 807-6581 or
eva@linrealtygroup.com.

24 *Id.* at ¶ 9.

25 In order to conduct an orderly auction and provide sufficient time for the
26 publication of notices discussed above, the Receiver will require bidders to complete
27 the above steps by November 12, 2018 ("Bid Qualification Deadline"), and conduct
28

1 the live public auction at the Property at 11:00 a.m. on November 19, 2018. *Id.* at
2 ¶ 10.

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 \$911,000, (b) providing the Receiver with an earnest money deposit of
8 \$25,000, 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 ¶ 11.

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 \$5,000. 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 \$7,500 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 ¶ 12.

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 ¶ 13.

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: October 12, 2018

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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