

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.  
28

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

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

Date: December 17, 2018  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on December 17, 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 (Vosburg 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.

24

25 Dated: November 19, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

26

By:           /s/ Edward Fates

27

EDWARD G. FATES  
Attorneys for Receiver  
Thomas A. Seaman

28

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 2014,  
6 Steamfont Investment Group LLC ("Steamfont"), an affiliate of the named  
7 Defendants, purchased the real property located at 1261 N. Vosburg Drive, Azusa,  
8 California ("Property") – a single-family residence – for \$729,000. The Property is  
9 approximately 3,475 square feet and has four bedrooms. The Receiver learned of  
10 Steamfont's purchase of the Property through his investigation and forensic  
11 accounting and took possession and control of the Property in 2018 pursuant to the  
12 Court's orders. Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."),  
13 ¶ 3.

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

19 After reviewing recent comparable sales and the appraisal of \$850,000, and  
20 similar property listings with Broker, the Receiver listed the Property for sale in  
21 September 2018 at \$825,000. The Receiver staged the interior of the property to  
22 improve the appearance. Broker held 4 open houses. Approximately 35 prospective  
23 toured the Property. The Receiver received five offers, ranging from \$825,000 to  
24 \$870,000. The Receiver made a counter calling for the all bidders to submit a "best  
25 and final" offer. *Id.* at ¶ 5.

26 On October 5, 2018, the Receiver and Silvia Chang, Kevin Yang ("Buyer")  
27 agreed on a purchase price of \$909,800 and executed a Residential Purchase  
28 Agreement and Joint Escrow Instructions ("Agreement"). Among other things, the

1 Agreement specifies the sale is subject to Court approval and is on an "AS IS" basis.  
2 The 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:<sup>1</sup>

26  
27  
28 <sup>1</sup> 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           **Court approval.** All aspects of the Agreement and the sale are subject to  
2 approval by the Court.

3           **Purchase Price.** \$909,800. The Receiver has agreed to credit Buyer \$500 as  
4 close of escrow based on Buyer's request for repairs to the Property.

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

6           **Deposit.** Buyer had deposited \$27,294 into escrow, refundable only if the  
7 Court does not approve the sale to Buyer.

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

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

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

#### 20 **IV. ARGUMENT**

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

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 1261 N. Vosburg Dr., Azusa, California. Sale is subject to  
21 Court confirmation after the auction is held. Minimum bid  
22 price is \$959,800. The auction will take place on December 17,  
23 2018, at 11:00 a.m. at the property located at 1261 N. Vosburg  
24 Dr., Azusa, 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 \$27,294, and proof of funds. All bidders must be qualified by  
3:00 p.m. PST on December 10, 2018, by submitting the  
required materials to 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 December 10, 2018 ("Bid Qualification Deadline"), and conduct  
28

1 the live public auction at the Property at 11:00 a.m. on December 17, 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 \$959,800, (b) providing the Receiver with an earnest money deposit of  
8 \$27,294, 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,<sup>2</sup> taxes, and any other claims  
26  
27

28 <sup>2</sup> 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.

15

16 Dated: November 19, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

17

By:           /s/ Edward Fates          

18

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS A. SEAMAN

19

20

21

22

23

24

25

26

27

28