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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

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH LI ZHAO,
YANHONG WU AND QI CHEN**

Date: January 7, 2019
Time: 9:00 a.m.
Ctm.: 850
Judge: Hon. R. Gary Klausner

1 I, Thomas A. Seaman, declare:

2 1. I am the Court-appointed receiver for USFIA, Inc., Alliance Financial
3 Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC,
4 Aborell REIT II, LLC, Ahome Real Estate, LLC ("Ahome"), Alliance NGN, Inc.,
5 Apollo REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation
6 Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates
7 (collectively, "Receivership Entities").

8 2. I make this declaration in support of my Motion ("Motion") for
9 Approval if Settlement Agreement with Li Zhao ("Zhao"), Yanhong Wu and Qi
10 Chen (collectively, the "Ally Claimants"). I have personal knowledge of the facts
11 stated herein, and if called upon to do so, I could and would personally and
12 competently testify to them.

13 3. On November 23, 2015, Zhao filed a motion seeking to intervene in
14 this action and asked the Court to unfreeze certain bank accounts and a safe deposit
15 box at Bank of America. One account was in the name of David Chen (Zhao and
16 Defendant Steve Chen's son) and three were in the name of Ally Investors. The safe
17 deposit box was in Zhao's name. The accounts and the safe deposit box had been
18 frozen when I provided the TRO and PI Order to Bank of America.

19 4. The Securities and Exchange Commission and I opposed Zhao's
20 motion. I argued that Ally Investors was an affiliate of Chen and the Receivership
21 Entities and therefore was subject to the asset freeze and receivership pursuant to the
22 TRO and PI Order. Zhao argued Ally Investors was unrelated to Chen and the
23 Receivership Entities, conducted its own business, and was separately funded by
24 Yanhong Wu and Qi Chen, who are located in China. Ally Investors' corporate and
25 tax records identify Yanhong Wu and Qi Chen as members of Ally Investors.

26 5. Through my investigation, I discovered that the Receivership Entities
27 made certain transfers to Zhao and to third parties for her benefit. I believe some of
28 these transfers are recoverable from Zhao under the California Uniform Voidable

1 Transactions Act, and therefore I sought authority from the Court to pursue an
2 action against Zhao to recover the applicable transfers. The total in potentially
3 fraudulent transfers to Zhao is just over \$370,000. Such authority was granted by
4 the Court on August 7, 2018. I filed a separate action against Zhao on August 16,
5 2018.

6 6. The Ally Claimants and I have entered into a settlement agreement
7 ("Settlement Agreement"), subject to Court approval, pursuant to which the Ally
8 Claimants release all claims that the funds contained in Ally Investors' accounts and
9 the safety deposit box are unrelated to the fraudulent scheme and therefore should
10 be returned to them in full. In return, I release all claims against Zhao for recovery
11 of potentially fraudulent transfers made to her. The Ally Claimants retain the right
12 to submit claims in the receivership and have those claims reviewed and treated in
13 the same manner as other investor claims. A true and correct copy of the Settlement
14 Agreement is attached as Exhibit A hereto.

15 7. I have weighed the costs and likely benefits of the various claims being
16 released. With respect to the Ally Claimants' claims to the funds in the Ally
17 Investors accounts and safety deposit box, approximately half of the funds were
18 traced directly back to the receivership entities. There are significant tracing
19 challenges regarding the other half, however, including that a substantial amount
20 was sent to Ally Investors by money transfer agents located in China that have no
21 legal obligation to comply with a subpoena from this Court. The Ally Claimants
22 claim they transferred these funds to Ally Investors (through the Chinese money
23 transfer agents) and the funds are unrelated to the Defendants' fraudulent scheme.
24 Although I believe I would ultimately be successful in defeating the Ally Claimants'
25 claims to recover the funds, there is considerable cost and risk associated with the
26 litigation.

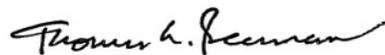
27 8. With respect to my fraudulent transfer claim against Zhao, I am
28 confident I would ultimately be successful in obtaining a judgment, but the amount

1 of the judgment and the recovery is less certain. Zhao claimed some of the transfers
2 to her were reimbursement for luxury items and gifts she purchased for investors. If
3 determined to be true, this would reduce the amount of the judgment. Moreover,
4 Zhao clearly has strong ties to China, so the ability to collect on a judgment with
5 assets of Zhao located in the United States is uncertain and presents considerable
6 risk.

7 9. The Settlement Agreement avoids costly litigation and ensures that the
8 approximately \$3.2 million in the Ally Investors accounts and safety deposit box
9 will be distributed *pro rata* to all investors with losses from the Defendants'
10 fraudulent scheme. Accordingly, I believe the Settlement Agreement is in the best
11 interests of the receivership estate, and therefore ask that it be approved.

12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed this 28th day of November 2018, at Irvine, California.

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16 _____
17 THOMAS A. SEAMAN
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EXHIBIT A

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("Agreement"), dated as of November 27, 2018, is made by and between THOMAS A. SEAMAN ("**Receiver**"), in his capacity as Court-appointed permanent receiver for 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 ("**Receivership Entities**"), on the one hand, and LI ZHAO aka JENNIFER ZHAO ("**Zhao**"), YANHONG WU and QI CHEN (collectively with Zhao, "**Ally Claimants**"), on the other hand.

RECITALS

A. On September 28, 2015, the Securities and Exchange Commission ("**Commission**") filed a Complaint in the United States District Court for the Central District of California ("**District Court**") against Defendants Steve Chen, 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 ("**SEC Action**"). Concurrently with filing the Complaint, the Commission filed an Ex Parte Application for a Temporary Restraining Order ("**TRO**"), including the appointment of a temporary receiver for the Receivership Entities.

B. The District Court granted the Ex Parte Application and entered the TRO on September 28, 2015, including appointment of the Receiver on a temporary basis. On October 6, 2015, the Court entered a Preliminary Injunction Order ("**PI Order**"), making permanent the Receiver's appointment.

C. On November 23, 2015, Zhao filed a motion seeking to intervene in the SEC action and asked the District Court to unfreeze certain bank accounts and a safe deposit box at Bank of America. One account was in the name of David Chen (Zhao and Defendant Steve Chen's son) and three were in the name of Ally Investors, LLC ("**Ally Investors**"). The safe deposit box was in Zhao's name. The accounts and the safe deposit box had been frozen when the Receiver provided the TRO and PI Order to Bank of America.

D. The Receiver and the Commission opposed Zhao's motion. The Receiver argued that Ally Investors was an affiliate of Chen and the Receivership Entities and therefore was subject to the asset freeze and receivership pursuant to the TRO and PI Order. Zhao argued that Ally Investors was unrelated to Chen and the Receivership Entities, conducted its own business, and was separately funded by Yanhong Wu and Qi Chen, who are located in China. Ally Investors' corporate and tax records identify Yanhong Wu and Qi Chen as members of Ally Investors.

E. In its order dated January 15, 2016, the District Court allowed Zhao to intervene and ordered that the David Chen account be unfrozen. The District Court, however, found that Zhao and Ally Investors are affiliates of Chen and the Receivership Entities, and therefore

declined to unfreeze the remaining accounts or the safe deposit box ("**January 15, 2016 Order**").

F. Through his investigation pursuant to the TRO and PI Order, the Receiver discovered that the Receivership Entities made certain transfers to Zhao and to third parties for her benefit. The Receiver believes that some of these transfers are recoverable from Zhao under the California Uniform Voidable Transactions Act, and therefore sought authority from the District Court to pursue an action against Zhao to recover the applicable transfers. Such authority was granted on August 7, 2018.

G. The Receiver and the Ally Claimants have agreed to settle, resolve, and release certain claims against one another under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. **Court Approval.** All aspects of this Agreement are subject to approval by the District Court by way of an order approving this Agreement ("**Court Approval**"). The Agreement is non-binding until such approval is granted. The Receiver will promptly seek Court Approval upon execution of this Agreement by all parties.

2. **Release by the Receiver.** The Receiver, for himself, his agents, employees, partners, directors, officers, successors, assigns, and the receivership estate, irrevocably and unconditionally releases Zhao and her agents, employees, partners, directors, officers, successors and assigns, forever, from any and all claims, demands, rights of action, causes of action, obligations, judgments, motions, petitions, writs, challenges, or appeals relating to any and all transfers of funds from the Receivership Entities, or any of them, to Zhao or to third parties on her behalf or for her benefit, all of which are hereinafter called, "**Receiver Released Claims.**"

The Receiver acknowledges and agrees that the Receiver Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Receiver agrees that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR ."

The Receiver expressly waives and releases any rights and benefits that he has or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Receiver through this Agreement and with the advice of counsel to fully, finally and forever settle and release the claims and disputes as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

3. **Release of Claims by Ally Claimants.** The Ally Claimants, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release any and all claims, demands, rights of action, causes of action, motions, petitions, writs, challenges, or appeals relating to (a) the accounts and safe deposit box at Bank of America under the names Ally Investors and Li Zhao, with the last 4 digits of 7748, 8387, 6448, 65G9, respectively (b) the status of Ally Investors as an affiliate of the Receivership Entities (c) the District Court's January 15, 2016 Order, (d) the status of Ally Investors, LLC as a receivership entity pursuant to the TRO and PI Order, (e) the inclusion of all assets of Ally Investors in the receivership estate pursuant to the TRO and PI Order, or (f) any priority right to funds held in the receivership estate ahead of other investors or creditors, all of which are hereinafter called, "**Ally Claimants Released Claims.**"

The Ally Claimants, and each of them, acknowledge and agree that the Ally Claimants Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Ally Claimants agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR ."

The Ally Claimants expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Ally Claimants through this Agreement and with the advice of counsel to fully, finally and forever settle and release the claims and disputes as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

4. **Cooperation.** Zhao shall cooperate and assist in taking whatever steps and executing whatever documents are required to transfer possession of the contents of the safe

deposit box at Bank of America under the name Li Zhao with the last 4 digits of 65G9 to the Receiver.

5. **Investor Claims Process.** Nothing contained herein shall alter or affect the right of the Ally Claimants to submit claims against the receivership estate for losses they may have sustained from investments in the Receivership Entities, including in Ally Investors, and to have those claims reviewed by the Receiver and determined by the District Court in the same manner as other investors. In the event Zhao asserts a claim against the receivership estate, nothing contained herein shall alter or limit the Receiver's right to object to the claim or to present evidence to the District Court regarding transfers made to Zhao or to third parties for her benefit in connection with prosecuting such objection.

6. **Voluntary Signing.** Each of the parties to this Agreement has executed this Agreement without any duress or undue influence.

7. **Independent Counsel.** Each of the parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

8. **Governing Law and Venue.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and Federal Equity Receivership law, and subject to the exclusive jurisdiction of the District Court.

9. **Waiver/Amendment.** No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

10. **Fax and Counterparts.** This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

11. **Attorneys' Fees and Costs.** The parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the parties' efforts to obtain District Court approval thereof, if required. If any proceeding, action, suit or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

12. **No Assignment.** The parties represent that they have not assigned, transferred, or purported to assign or transfer to any person or entity any claims, demands, liabilities, damages, actions or causes, suits and/or controversies of any kind and every nature that are released herein, and no other person or entity has any interest in any claims, demands, liabilities, damages, actions or causes, suits and/or controversies of any kind and every nature that are released herein.

13. **Non-Admission of Liability.** The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the parties for any purpose. By executing this Agreement, none of the parties admits wrongdoing, liability or fault in connection with, nor to the merit of, the Action, or the allegations asserted therein.

14. **Notices.** Notices to be provided hereunder shall be effective if sent to the following:

To Ally Claimants:

Jennifer Zhao
753 Carriage House Drive
Arcadia, CA 91006

To the Receiver:

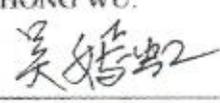
Thomas A. Seaman, Receiver c/o Allen Matkins
600 W. Broadway, 27th Floor
San Diego, CA 92101
Attn: Ted Fates, Esq.
tfates@allenmatkins.com

SIGNATURES:

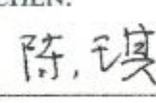
LI ZHAO aka JENNIFER ZHAO:

By: 

YANHONG WU:

By: 

QI CHEN:

By: 

THOMAS A. SEAMAN, COURT-
APPOINTED PERMANENT RECEIVER

By: 
THOMAS A. SEAMAN, Receiver