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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 vs.

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

26 Defendants.

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

**NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT  
WITH WEI HE, AHOMELAND,  
INC., AND GOLDEN ARK, INC.;**  
**MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: January 28, 2019  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**  
 2           **PLEASE TAKE NOTICE** that on January 28, 2019, at 9:00 a.m. in  
 3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street, Los  
 4 Angeles, CA 90012, Thomas A. Seaman ("Receiver"), the Court-appointed  
 5 permanent receiver for USFIA, Inc., Alliance Financial Group, Inc., Amauction,  
 6 Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome  
 7 Real Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,  
 8 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,  
 9 and their subsidiaries and affiliates ("Receivership Entities"), will and hereby does  
 10 move the Court for an order approving the settlement agreement with Wei He,  
 11 Ahomeland, Inc., and Golden Ark, Inc. ("Motion").

12           This Motion is based on this Notice of Motion and Motion, the attached  
 13 Memorandum of Points and Authorities, the Declaration of Thomas Seaman, the  
 14 documents and pleadings already on file in this action, and upon such further oral  
 15 and documentary evidence as may be presented at the time of hearing.

16           **Procedural Requirements:** If you oppose this Motion, you are required to  
 17 file your written opposition with the Office of the Clerk, United States District  
 18 Court, 255 East Temple Street, Los Angeles, CA 90012, and serve the same on the  
 19 undersigned not later than 21 days prior to the hearing.

20           **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the  
 21 above date, the Court may grant the requested relief without further notice. This  
 22 Motion is made following the conference of counsel pursuant to L.R. 7-3.

23  
 24 Dated: December 18, 2018

ALLEN MATKINS LECK GAMBLE  
 MALLORY & NATSIS LLP

By:           /s/ Edward Fates

EDWARD G. FATES  
 Attorneys for Receiver  
 WILLIAM J. HOFFMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver seeks approval of a settlement with Wei He, aka Grace He,  
4 individually and as Trustee of the Wei He Trust dated July 1, 2005 ("He"), as well  
5 as two entities He controls, Ahomeland, Inc. and Golden Ark, Inc. (collectively, "He  
6 Parties"). The proposed settlement resolves claims the Receiver has asserted against  
7 the He Parties in a Court-authorized related action, as well as the He Parties'  
8 defenses to those claims, including their defense that the Receiver's claims must be  
9 reduced due to offsetting amounts the He Parties claim to be owed.

10 Under the settlement agreement, the He Parties will transfer title to two  
11 residential properties to the Receiver. The two properties – located at 363 Monterey  
12 Pines Drive, Arcadia, California and 5088 Scholarship, Irvine, California  
13 ("Properties") – were purchased almost entirely with funds transferred to escrow by  
14 the Receivership Entities, but title to the Properties was taken in the He Parties'  
15 names. In exchange, the Receiver will agree to the release of funds held in two  
16 accounts under the He Parties' names. These accounts were frozen by Wells Fargo  
17 Bank when it received the Court's TRO at the outset of the case, but the Receiver's  
18 accounting does not show any transfers to the accounts from the Receivership  
19 Entities. The balance in the two accounts is approximately \$96,000. The Receiver  
20 and the He Parties will also release all claims against one another, including the  
21 Receiver's claims for recovery of fraudulent transfers and the He Parties' defenses  
22 relating to offsetting payments.

23 The Receiver believes the proposed settlement, which (a) provides for the  
24 immediate recovery of the Properties, which have an estimated combined value of  
25 approximately \$5.7 million, and (b) avoids costly fraudulent transfer litigation with  
26 the He Parties with an uncertain recovery, is in the best interests of the receivership  
27 estate.

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1 **II. BACKGROUND FACTS**

2 On September 28, 2015, the Securities and Exchange Commission  
3 ("Commission") filed its Complaint against Defendants Steve Chen, USFIA, Inc.,  
4 Alliance Financial Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell  
5 Advisors I, LLC, Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN,  
6 Inc., Apollo REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China  
7 Consultation Association, Quail Ranch Golf Course, LLC. Dkt. No. 3.  
8 Concurrently with filing the Complaint, the Commission filed an Ex Parte  
9 Application for a Temporary Restraining Order ("TRO" ), including the  
10 appointment of a temporary receiver for the Receivership Entities. Dkt. No. 1.

11 The District Court granted the Ex Parte Application and entered the TRO on  
12 September 28, 2015, including appointment of the Receiver on a temporary basis.  
13 Dkt. No. 8. On October 6, 2015, the Court entered a Preliminary Injunction Order  
14 ("PI Order"), making permanent the Receiver's appointment. Dkt. No. 13.

15 Through his investigation and forensic accounting, the Receiver learned that  
16 the Receivership Entities paid a total of \$5,334,000 towards the purchase of the  
17 Properties (\$4,424,000 for 363 Monterey Pines and \$910,000 for 5088 Scholarship).  
18 These amounts were paid directly to escrow prior to the closing of the sales and title  
19 to the Properties was taken in the He Parties' names. The purchases occurred in  
20 November 2014 (5088 Scholarship) and June 2015 (363 Monterey Pines).  
21 Declaration of Thomas Seaman in Support of the Motion ("Seaman Decl."), ¶ 2.

22 When the Receiver's counsel contacted the He Parties to demand turnover of  
23 the Properties, they refused, claiming (a) they had invested significant amounts to  
24 maintain and improve the Properties, for which they should be reimbursed, and  
25 (b) they should be entitled to share in the appreciation in value of the Properties  
26 since they were purchased. The Receiver asked the He Parties to provide  
27 documentation showing the expenses they incurred to maintain and improve the  
28 Properties, but they failed to do so. Seaman Decl., ¶ 3.

1 The Receiver's forensic accounting also showed transfers to the He Parties or  
2 for their benefit in excess of \$1 million. Accordingly, the Receiver sought and was  
3 granted authority to pursue claims against the He Parties to recover the fraudulent  
4 transfers, including the \$5,334,000 paid for the purchase of the Properties, plus the  
5 approximately \$1 million in additional transfers. Dkt. Nos. 283, 286. On  
6 January 19, 2018, the Receiver filed his related action against the He Parties. Case  
7 No. 2:18-cv-00498-RGK-PLA. Seaman Decl., ¶ 4.

8 Through discovery and further analysis of the transfers to the He Parties, the  
9 Receiver determined the total amount of potentially recoverable transfers from the  
10 Receivership Entities to the He Parties was substantially less than \$1 million, and  
11 closer to \$350,000. With respect to offsetting payments, the He Parties claimed to  
12 have spent a total of \$459,494 for property taxes, HOA dues, insurance, utilities,  
13 maintenance, an appraisal, and improvements (remodeling work) for the Properties.  
14 Although the Receiver disputes the validity of some of these payments and believes  
15 they would not be allowed to reduce/offset the He Parties' liability for disgorgement  
16 of fraudulent transfers made to them, the Receiver acknowledges that other  
17 payments did benefit the Properties. The Receiver has also confirmed the He Parties  
18 paid a total of \$32,300 of their own funds to escrow for the purchase of 5088  
19 Scholarship (this amount was the earnest money deposit, with the remainder of the  
20 purchase price paid by the Receivership Entities). Seaman Decl., ¶ 5.

### 21 III. PROPOSED SETTLEMENT TERMS

22 Under the Settlement Agreement, a copy of which is attached to the Seaman  
23 Decl. as Exhibit 1, the He Parties will transfer title to the Properties to the Receiver  
24 pursuant to Grant Deeds attached to the Settlement Agreement. In exchange, the  
25 Receiver will agree to the release of funds frozen in the two Wells Fargo accounts  
26 under the He Parties' names. As noted above, the balance in the two accounts is  
27 approximately \$96,000. The Receiver and the He Parties will also release all claims  
28 against one another, including the Receiver's claims for recovery of fraudulent

1 transfers and the He Parties' defenses relating to offsetting payments. Finally, the  
2 parties will sign and file a stipulation dismissing the Receiver's related action  
3 against the He Parties with prejudice.

#### 4 IV. DISCUSSION

5 A federal equity receiver's power to compromise claims is subject to court  
6 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*,  
7 803 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an  
8 equity receivership and to determine the appropriate action to be taken in the  
9 administration of the receivership is extremely broad." With regard to settlements  
10 entered into by a federal equity receiver, the Court's supervisory role includes  
11 reviewing and approving those settlements in light of federal court policy to  
12 promote settlements before trial. See Fed. R. Civ. P. 16(c), Advisory Committee  
13 Notes.

14 Federal courts of equity often look to bankruptcy law for guidance in the  
15 administration of receivership estates. See *SEC v. Capital Consultants, LLC*,  
16 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*,  
17 98 F.3d 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*,  
18 273 F.3d 657, 665 (6th Cir. 2001); see also Local Civil Rule 66-8 ("a receiver shall  
19 administer the estate as nearly as possible in accordance with the practice in the  
20 administration of estates in bankruptcy"). A bankruptcy court may approve a  
21 compromise of claims asserted by or against the estate if the compromise is "fair  
22 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*,  
23 839 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise  
24 negotiated by a court appointed fiduciary "is an exercise of discretion that should  
25 not be overturned except in cases of abuse leading to a result that is neither in the  
26 best interest of the estate nor fair and equitable for the creditors." *In re MGS*  
27 *Marketing*, 111 B.R. 264, 266 67 (B.A.P. 9th Cir. 1990).

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1 The Court has great latitude in approving compromises. In passing on the  
2 proposed compromise, the Court should consider the following:

- 3 a. The probability of success in litigation;
- 4 b. The difficulties, if any, to be encountered in the  
matter of collection;
- 5 c. The complexity of the litigation involved and the  
6 expense, inconvenience, and delay necessarily  
attending; and
- 7 d. The paramount interest of the creditors and a proper  
deference to their reasonable views in the premises.

8 Woodson, 839 F.2d at 620.

9 Here, the Settlement Agreement provides for the immediate recovery of the  
10 Properties, which have an estimated combined value of approximately \$5.7 million.  
11 With respect to the Receiver's claims for additional fraudulent transfers made to the  
12 He Parties and the He Parties' defense of offsetting payments, the Receiver believes  
13 he would ultimately prevail in securing a judgment against the He Parties, but the  
14 litigation would be time-consuming and expensive.

15 Additionally, after securing a judgment, the Receiver would have to obtain a  
16 judgment lien against the Properties and force a sale of them, which would also  
17 involve considerable cost and delay. Finally, the collectability of a judgment against  
18 the He Parties above and beyond the value of the Properties is unknown and  
19 involves considerable collection risk. With respect to the two accounts at Wells  
20 Fargo Bank, the funds in those accounts are not traceable to the Receivership  
21 Entities, so the Receiver believes the He Parties may well prevail in having those  
22 accounts unfrozen and returned to them if the matter were to be litigated. Therefore,  
23 the Receiver believes the net recovery from further litigation is unlikely to be  
24 greater than the recovery under the Settlement Agreement.

25 Accordingly, the Settlement Agreement, which avoids the further costs and  
26 delay of litigation and generates an immediate recovery in the form of the  
27 substantial value of the Properties, is in the best interests of the receivership estate  
28 and should be approved.

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**V. CONCLUSION**

Based on the foregoing, the Receiver requests an order approving the Settlement Agreement.

Dated: December 18, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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