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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 STEVE CHEN, USFIA, INC.,  
ALLIANCE FINANCIAL  
20 GROUP, INC., AMAUCTION, INC.,  
ABORELL MGMT I, LLC, ABORELL  
21 ADVISORS I, LLC, ABORELL  
REIT II, LLC, AHOME REAL  
22 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

Date: January 6, 2020

Time: 9:00 a.m.

Ctrm: 850

Judge Hon. R. Gary Klausner

**NOTICE OF MOTION AND  
MOTION FOR (A) APPROVAL OF  
SALE OF 5088 SCHOLARSHIP  
PROPERTY; AND (B) AUTHORITY  
TO PAY BROKER'S COMMISSION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

1           **TO ALL INTERESTED PARTIES:**

2           **PLEASE TAKE NOTICE** that on January 6, 2020, 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 including Steamfont Investment Group, LLC (collectively, "Receivership Entities"),  
11 hereby moves the Court for (A) approval of sale of the 5088 Scholarship property;  
12 and (B) authority to pay 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 in  
15 support, the documents and pleadings already on file in this action, and upon such  
16 further oral and documentary evidence as may be presented at the time of the  
17 hearing.

18           **Procedural Requirements:** If you oppose this Motion, you are required to  
19 file your written opposition with the Office of the Clerk, United States District Court,  
20 255 East Temple Street, Los Angeles, California 90012-3332, and serve the same on  
21 the undersigned not later than 21 days prior to the hearing.

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

4  
5 Dated: December 9, 2019

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
EDWARD G. FATES  
TIM C. HSU

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8  
9 By:           /s/ Tim C. Hsu          

TIM C. HSU  
Attorneys for Receiver  
THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

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

13 Pursuant to the Appointment Orders, the Receiver investigated the business  
14 transactions of the Receivership Entities and, with authorization from the Court,  
15 filed an action against a third party, Wei He, for recovery of properties fraudulently  
16 transferred to her, which properties included the single-family, high-rise  
17 condominium residence located at 5088 Scholarship, Irvine, California (the  
18 "Scholarship Property"). (*See* Declaration of Thomas A. Seaman ["Seaman Decl."],  
19 ¶ 3.) Ultimately, the Receiver, with Court-approval, settled the dispute with Ms. He  
20 and title to the Scholarship Property was transferred to the Receiver for the benefit  
21 of the receivership estate in accordance with the Court-approved settlement. (*Id.*)  
22 The Court approved the settlement with Ms. He on January 28, 2019, as reflected in  
23 the Court Order entered on the same date. (*Id.*; *see also* Dkt. No. 372.)

24 The Scholarship Property has been maintained by the Receiver since he  
25 obtained title and possession, which maintenance has entailed certain carrying costs  
26 to the receivership estate, including costs for maintenance, insurance, and property  
27 taxes. (*Id.* at ¶ 4.) The Receiver listed the Scholarship Property for sale in August  
28 2019 through licensed broker Esquire Realty Company ("Esquire Realty"). (*Id.*)

1 After consulting with Esquire Realty, the Receiver initially listed the  
2 Scholarship Property at \$895,000. (*Id.* at ¶ 5.) The property was listed on the MLS,  
3 generating interest in the property, including over 20 showings of the property to  
4 potential buyers. (*Id.*) While there was interest in the property, a number of issues  
5 concerning the property impacted its marketability, including repairs that were  
6 needed and, more importantly, ongoing litigation involving the home owners'  
7 association for the property and its original builder for alleged construction defect.  
8 (*Id.*) While the repair issues were addressed by the Receiver, the ongoing litigation  
9 was still a major concern for buyers and may have impacted the value of the  
10 development as a whole. (*Id.*) In addition, the marketability of the property has  
11 been impacted by the location of the property within the development, the lack of  
12 recent renovations, and the fact the property faces a major thoroughfare and is in  
13 close proximity to a commercial/industrial area across the street. (*Id.*) Despite these  
14 issues, four offers were ultimately received and the Receiver reached an agreement  
15 with one of these parties, Vahi Sattari ("Buyer"), on a purchase price of \$895,000,  
16 subject to Court approval. (*Id.*) The Receiver and the Buyer then entered into a  
17 Purchase and Sale Agreement and Joint Escrow Instructions dated September 18,  
18 2019 ("Purchase Agreement"). (*Id.*) Among other things, the Purchase Agreement  
19 specifies the sale of the Property is subject to Court approval, an overbid process,  
20 and is on an "AS IS" basis. (*Id.*)

21 In his reasonable business judgment, the Receiver believes the Purchase  
22 Agreement, obtained through the commercially reasonable and customary method of  
23 listing the property with a licensed broker and after arm's length negotiations with  
24 multiple potential buyers, reflects the fair market value of the property. (*Id.* at ¶ 6.)  
25 Moreover, the sale is subject to overbid and public auction procedures discussed  
26 below, and any ultimate sale price determined through these procedures should  
27 result in the highest and best price for the property. (*Id.*)

28



1 **II. TERMS OF THE AGREEMENT**

2 A copy of the Purchase Agreement is attached as Exhibit A to the Seaman  
3 Declaration filed concurrently herewith. Its terms are summarized as follows (*Id.* at  
4 ¶ 5, Ex. A.):<sup>1</sup>

5 **Court approval.** All aspects of the Agreement and the sale are subject to  
6 approval by the Court and overbid procedures.

7 **Purchase Price.** \$895,000.

8 **Closing Date.** Escrow to close within 14 days of Court approval of the sale.

9 **Deposit.** Buyer has deposited \$26,850 into escrow, refundable only if the  
10 Court does not approve the sale to Buyer.

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

12 **Break-Up Fee.** In the event Buyer is outbid by a qualified overbidder at the  
13 auction, he will be entitled to a break-up fee of \$5,000 to compensate for the time  
14 and expenses incurred in conducting due diligence on the property.

15 **Broker's Commission.** By separate agreement, the Receiver has agreed,  
16 subject to Court approval, to pay Esquire Realty a commission of 5% of the final  
17 purchase price, or 4% if Esquire Realty represents both the buyer and seller. (*Id.* at  
18 ¶ 12.) The contemplated sale to the Buyer entails a 5% commission as the buyer is  
19 independently represented by a separate broker. (*Id.*)

20 **III. 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

27 \_\_\_\_\_  
28 <sup>1</sup> The terms of the Purchase Agreement are summarized herein for convenience  
only. In the event of any conflict between the Purchase Agreement and the  
summary provided herein, the Purchase Agreement governs and controls.

1 and efficient administration of the estate by the district court for the benefit of  
2 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986).

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., SEC v.*  
27 *Elliot*, 953 F.2d 1566 (11th Cir. 1992) (finding that the District Court has broad  
28 powers and wide 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*

1 § 482 (3d ed. 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)).

2 "When a court of equity orders property in its custody to be sold, the court itself as  
3 vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on*  
4 *Law & Practice of 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 by receivers under subsection (a) and specific requirements for private  
25 sales of real property under subsection (b). Although both involve unnecessary cost  
26 and delay, the cost and delay of a public sale are significantly less than those for a  
27 private sale. *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal.  
28 2013) ("Section 2001 sets out two possible courses of action: (1) property may be

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

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

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

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

21 This section shall not apply to sales and proceedings under Title 11  
22 or by receivers or conservators of banks appointed by the  
23 Comptroller of the Currency.

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

1 of the Receiver, that it has the current ability to consummate the purchase of the  
2 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
3 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

4 **IV. DISCUSSION**

5 Here, the proposed sale to the Buyer or a qualified overbidder for the  
6 Scholarship Property should be approved. (Seaman Decl., ¶¶ 5-6.) The property  
7 has been fully and properly exposed to the market by a licensed broker through the  
8 customary means of listing the residential property on the MLS, property showings,  
9 general advertising, and correspondence with known interested buyers. (*Id.*) The  
10 Receiver believes the proposed sale represents the fair market value for the  
11 Scholarship Property and will generate the highest and best recovery from the  
12 property for the estate. (*Id.*)

13 Moreover, the proposed sale is subject to overbid and public auction  
14 procedures. (*Id.* at ¶ 7.) The Receiver proposes to conduct a public auction  
15 consistent with the requirements of Section 2001(a). (*Id.*) Specifically, the  
16 Receiver will publish the following notice of the intended sale once a week for four  
17 weeks in the Orange County Register:

18 **NOTICE OF SALE OF REAL ESTATE AND REQUEST FOR  
19 OVERBIDS**

20 In the action pending in U.S. District Court for the Central  
21 District of California, Case No. 16-CV-07425-RGK-PLA,  
22 Securities and Exchange Commission v. Steve Chen et al.,  
23 notice is hereby given that the court-appointed receiver will  
24 conduct a public auction for the residential real property located  
25 at 5088 Scholarship, Irvine, CA. Sale is subject to Court  
26 confirmation after the auction is held. Minimum bid price is  
27 \$945,000. The auction will take place on January 6, 2020, at  
28 11:00 a.m. at the property. To be allowed to participate in the  
auction, prospective purchasers must meet certain bid  
qualification requirements, including submitting a signed  
purchase and sale agreement, an earnest money deposit of  
\$26,850, and proof of funds. All bidders must be qualified by  
2:00 p.m. PT on December 30, 2019, by submitting the required  
materials to the Thomas Seaman Company at 3 Park Plaza,  
Suite 550, Irvine, California 92614. If interested in qualifying  
as a bidder, please contact Michael Carson at (949) 689-8920 or  
Michael@ESQRC.com.

1 (*Id.* at ¶ 7.)

2 In order to conduct an orderly auction and provide sufficient time for the  
3 publication of the notice discussed above, the Receiver will require bidders to  
4 complete the above steps by December 30, 2019 ("Bid Qualification Deadline"), and  
5 conduct the live public auction at the Scholarship Property on January 6, 2020 at  
6 11:00 a.m. (*Id.* at ¶ 8.)

7 The Receiver will inform all interested persons of the opportunity to overbid  
8 at the public auction, provided they qualify themselves to bid by the Bid  
9 Qualification Deadline by (a) signing a non-contingent purchase and sale agreement  
10 for the property on the same terms and conditions as the Buyer, but with a purchase  
11 price of at least \$945,000, (b) providing the Receiver with an earnest money deposit  
12 of \$26,850, and (c) providing proof of funds necessary to close the sale transaction  
13 in the form of a current bank statement, cashier's check delivered to the Receiver, or  
14 other evidence deemed sufficient by the Receiver. (*Id.* at ¶ 9.)

15 In the event one or more prospective purchasers qualify themselves to bid, the  
16 Receiver will promptly notify the Court and the auction will be conducted at the  
17 Scholarship Property as noted above. (*Id.* at ¶ 10.) After meeting the initial overbid  
18 requirement, bids will be allowed in increments of \$5,000. (*Id.*) The Receiver will  
19 then file a notice advising the Court of the result of the auction(s) (*i.e.*, the highest  
20 bid) and seek entry of an order confirming the sale(s). (*Id.*) Earnest money deposits  
21 provided by bidders who are unsuccessful will be promptly returned to them. (*Id.*)  
22 In the event no prospective purchasers qualify themselves to bid by the Bid  
23 Qualification Deadline, the Receiver will notify the Court and seek entry of an order  
24 approving the sale to the present Buyer for the Scholarship Property. (*Id.*)

25 **A. Additional Relief**

26 Pursuant to its broad equitable powers with respect to the administration of  
27 receivership assets, the Receiver requests the Court authorize payment from the  
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1 proceeds of the sale of the properties of the valid liens,<sup>2</sup> taxes, and any other claims  
2 on the properties, subject to any objections to such liens, taxes, or claims by the  
3 Receiver. (*Id.* at ¶ 11.) The Receiver notes that the Scholarship Property is owned  
4 free and clear of debt. (*Id.*) The net proceeds of the sale for the Scholarship  
5 Property is expected to be approximately \$837,000. (*Id.*)

6 Finally, the Receiver requests authority to pay Esquire Realty a commission  
7 in the amount of 5% of the final purchase price for sale of the Scholarship Property,  
8 or 4% if Esquire Realty ultimately represents both the seller and the buyer in the  
9 transaction. (*Id.* at ¶ 12.) Based on his extensive experience in real estate  
10 transactions, the Receiver believes that such commissions are commercially  
11 reasonable and consistent with real estate industry standards. (*Id.*) Esquire Realty  
12 has invested substantial time into preparing the property for sale, locating potential  
13 purchasers, marketing the property to them, negotiating terms, and assisting in  
14 preparing sale documents. (*Id.*)

15 **V. CONCLUSION**

16 For the reasons set forth herein, the Receiver respectfully requests entry of an  
17 Order approving and authorizing:

18 (1) sale of the Scholarship Property to the Buyer [or the successful  
19 overbidder]; and

20 (2) payment of a commission of 5% of the purchase price to Esquire Realty  
21 from the sale proceeds, or 4% if Esquire Realty ultimately represents both the seller  
22 and the buyer in the transaction.

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<sup>2</sup> Other than customary liens for property taxes and ordinary easements associated with properties of its nature, there do not appear to be any liens against the Scholarship Property.

1 Dated: December 9, 2019

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
EDWARD G. FATES  
TIM C. HSU

By:           /s/ Tim C. Hsu          

TIM C. HSU  
Attorneys for Receiver  
THOMAS A. SEAMAN

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