

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

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

10 Attorneys for Receiver
11 Thomas A. Seaman

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

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

24 Defendants.
25

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO APPROVE
RECEIVER'S AMENDED
DISTRIBUTION PLAN**

Date: June 6, 2022
Time: 9:00 a.m.
Ctrm: 850
Judge Hon. R. Gary Klausner

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION 4

II. PROCEDURAL BACKGROUND 5

III. INCOME TAX CLAIMS 7

IV. ARGUMENT..... 10

 A. This Court Enjoys Broad Discretion To Approve The
 Amended Plan 10

 B. Tax Claims Are Subject To Subordination 11

V. CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3 **Cases**

4 FTC v. Ameridebt, Inc.,
373 F.Supp.2d, 558 (D. Md. 2005)..... 11

5

6 FTC v. Crittenden,
823 F.Supp. 699 (C.D. Cal. 1993)..... 11

7 SEC v. Capital Consultants, LLC,
397 F.3d 733 (9th Cir. 2005) 10

8

9 SEC v. Elliot,
953 F.2d 1560 (11th Cir. 1992)..... 10

10 SEC v. Hardy,
803 F.2d 1034 (9th Cir. 1986) 10

11

12 SEC v. Private Equity Mgmt. Group, Inc.,
2012 U.S. Dist. LEXIS 195213, *22-23 (C.D. Cal. September 28,
2012)..... 11

13

14 SEC v. Stephenson Equity Util. Co.,
138 F.Supp.2d 512 (S.D.N.Y. 2001) 12

15 SEC v. Topworth Int’l, Ltd.,
205 F.3d 1107 (9th Cir. 1999) 10

16

17 SEC v. Wencke,
622 F.2d 1363 (9th Cir. 1980)..... 10

18 **Statutes**

19 31 U.S.C. § 3713..... 9

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION.**

2 Thomas A. Seaman, the Court-appointed permanent receiver (“Receiver”) for
3 Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell
4 Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real
5 Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,
6 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,
7 and their subsidiaries and affiliates (collectively, “Receivership Entities”), hereby
8 submits this Memorandum of Points and Authorities in Support of the Motion to
9 Approve Receiver’s Amended Distribution Plan (the “Motion”). The Amended
10 Plan of Receiver Thomas A. Seaman (“Amended Plan”), is attached as Exhibit A to
11 the Declaration of Thomas A. Seaman in Support of Motion to Approve Receiver’s
12 Amended Distribution Plan (“Seaman Declaration”).

13 This Court approved the Receiver’s original Distribution Plan in February,
14 2021, however, the Receiver has been unable to distribute over \$62 million (the
15 “Receivership Proceeds”) in recovered proceeds to the Investor Claimants because
16 the Receiver has been unable to gain the cooperation of the Internal Revenue
17 Service (the “IRS”), with regard to the IRS’s prospective claims.

18 This Motion and the proposed Amended Plan reflect the Receiver’s effort to
19 break the stalemate with the IRS and either gain their cooperation with regard their
20 future claims or obtain an order that subordinates the claims of the IRS based upon
21 the existence of a constructive trust and establish a Tax Reserve sufficient to allow
22 the Receiver to make an interim distribution to the Investor Claimants. The IRS’s
23 cooperation is requested because the IRS has a priority claim and the Receiver may
24 be personally liable if he makes distributions to Claimants prior to the payment of
25 the IRS’s claim. Here, the IRS has failed to either agree that it has no further claims
26 against the Receivership Entities or that any future claim by the IRS will be
27 subordinate to the payment of Allowed Claims of Investor Claimants and
28 Administrative Expenses.

1 The Receiver had expected to promptly resolve the IRS claims or prospective
2 claims. Instead, he has been waiting for over a year with little or no response from
3 the IRS. As such, the proposed amendment of the Distribution Plan is an effort to
4 have this Court resolve the issue by a finding that the Receiver holds the
5 Receivership Proceeds in constructive trust for the benefit of the Investor Claimants
6 with Allowed Claims and enter an order subordinating the IRS's claims to the
7 payment of Allowed Claimants. Such an order is consistent with case precedent and
8 the Department of Justice Directive 137 ("Directive 137"), a copy of which is
9 attached hereto as **Exhibit A**. The proposed amendment also requests that the Court
10 approve the establishment of an administrative expense and tax reserve of
11 \$16,500,000 (collectively the "Tax Reserve"), to be held by the Receiver until the
12 earlier of an agreement with the IRS or the running of the statute of limitations

13 **II. PROCEDURAL BACKGROUND.**

14 On September 28, 2015, the Receiver was appointed as the federal equity
15 receiver for the Receivership Entities pursuant to the Temporary Restraining Order
16 (the "TRO" or "Appointment Order"). The Receiver's appointment was made
17 permanent upon the entry of the Preliminary Injunction. Dkt. 14. On March 13,
18 2017, the Court entered a Final Judgment as to Defendant Steve Chen. Dkt. 210.
19 On March 17, 2017, the Court entered an Amended Final Judgment as to the
20 Receivership Entities. Dkt. 219. Since his appointment, the Receiver has concluded
21 monetization of all but a few of the Receivership Entities' assets. In doing so, the
22 Receiver has recovered over \$62 million for the benefit of Investor Claimants as
23 discussed herein.

24 On January 29, 2018, the Receiver filed the Motion for Order: (1) Setting
25 Claims Bar Date; (2) Approving Claims Forms; (3) Approving Claims Process; and
26 (4) Approving Engagement of Third Party Claims Analysts ("Claims Process
27 Motion"). [Doc. No. 299.] On March 7, 2018, the Court entered an order approving
28

1 the claims process (“Claims Process Order”) and an order setting a claims bar date
2 of June 29, 2018. [Doc. Nos. 307, 308.]

3 On December 19, 2019, the Receiver filed the Receiver’s Forensic
4 Accounting Report (“Receiver’s Accounting”). The Receiver’s Accounting
5 demonstrated that the Receivership Entities were operating a series of fraudulent
6 enterprises through which they raised \$197 million from investors. The Receiver’s
7 Accounting also demonstrated that all assets taken into the possession of the
8 Receiver and subsequently monetized had been acquired exclusively with investor
9 funds. [Doc. 406.] Ultimately, The Receiver recovered over \$62 million for
10 distribution to investors [i.e. the Receivership Proceeds], after payment of secured
11 loans and Administrative Expenses. The nature of the fraud and the resulting
12 damage to the victims is further reflected in the Joint Statement Re: Agreed Amount
13 of Restitution filed in the companion criminal proceeding, United States of America
14 v. Steven Chen, United States District Court, Central District of California, Case
15 No. 20-89-JFW. [Doc. 62.]

16 On February 18, 2021, the Court granted the Receiver Thomas A. Seaman’s
17 Motion to Approve (1) Receiver’s Recommendations as to Allowed Claims;
18 (2) Receiver’s Recommendations as to Disputed Claims; (3) Authorization to Limit
19 Scope of Receivership to Identified Receivership Entities; and (4) Distribution Plan
20 (“Claim and Distribution Plan Order”). [Doc. No. 455.] Following entry of the
21 Claim and Distribution Plan Order, the Receiver filed over 25 tax returns for pre-
22 receivership time periods and the qualified settlement fund tax returns for the post-
23 receivership periods (collectively, the “Tax Returns”). A list of the Tax Returns at
24 issue is attached to the Seaman Declaration as Exhibit B and incorporated herein by
25 this reference.

26 As discussed below, since before the filing of the Tax Returns, the Receiver
27 and tax professionals have been trying to gain the cooperation of the IRS with
28 regard to the prompt review, assessment and determination of the Tax Returns. This

1 was necessary because the Receiver cannot make distributions to investor victims or
2 other claimants until the IRS confirms that the Tax Returns have been accepted and
3 the IRS will not amend its claims or otherwise pursue an audit as to these Tax
4 Returns. The IRS has failed and refused to cooperate with the Receiver as to any of
5 these issues. As a result, the Receiver has filed this Motion to approve the Amended
6 Plan in order to establish that the Receivership Proceeds are held by the Receiver in
7 a constructive trust and therefore can be distributed to the Investor Claimants instead
8 of being held for the benefit of the IRS.

9 **III. INCOME TAX CLAIMS.**

10 The tax issues facing the Receivership Entities were significant and, as
11 previously reported, have impaired the ability of the Receiver to make prompt
12 distributions under the Distribution Plan. The Receiver's success in recovering over
13 \$62 million, combined with Mr. Chen's fraudulent raising of over \$197 million
14 during the pre-receivership years gave rise to the possibility of tax liabilities.
15 However, as reflected in the Tax Returns, the Receiver ultimately determined that
16 the Receivership Entities did not owe income taxes in light of, among other things,
17 the fact that Mr. Chen used the Receivership Entities to fraudulently raise funds
18 solely for his own (and his family's) benefit, and therefore the Receivership Entities
19 themselves did not benefit from the fraudulent activities. After filing of the returns,
20 the IRS filed a claim of \$29,193.96 for penalties and a small amount of interest, but
21 no income tax. Seaman Declaration. ¶¶ 6-8. Moreover, every dollar paid to the IRS
22 will be a dollar less for the investor victims.

23 The Receiver filed 20 pre-receivership the Receivership Entities' tax returns
24 for the "pre-receivership periods". For income tax purposes, the receivership is
25 treated as a qualified settlement fund ("QSF"), and the Receiver has also filed the
26 QSF returns for the 2015 – 2020 tax years and also will be preparing QSF returns
27 for the 2021 and 2022 tax years (and any later years if necessary). Seaman
28 Declaration. ¶ 5-7.

1 In general, the Tax Returns reflected net taxable losses or, in some cases, net
2 taxable income in one tax year was offset by net operating loss carrybacks or
3 carryforwards from other tax years. Seaman Decl. Par. 8. As such, there was little to
4 no income tax liability from those returns, (the Receiver paid the tax associated with
5 the limited legitimate activities reported on the returns)¹. In response to these
6 filings, the IRS filed a claim for \$29,193.96 based solely upon a claim for penalties
7 for late filed returns.² Id. at 7-8.

8 The Receiver cannot assume and the IRS has refused to confirm, that the IRS
9 has accepted the Tax Returns and will not seek to audit or otherwise amend its claim
10 in the future. The Receiver has tried to address this problem by seeking a so-called
11 “Prompt Determination” and “Prompt Assessment” of the Tax Returns. The
12 Receiver has also tried to directly engage the IRS and obtain their cooperation to, at
13 least, agree that any future claims would be subordinate to the Allowed Claims of
14 Investor Claimants.

15 The Receiver’s attempts to engage and cooperate with the IRS is consistent
16 with Directive 137. This directive is entitled: “Tax Claims Against Embezzlers,
17 Swindlers, etc. v. Recovery By Investors, Dupes and Victims, etc.” Directive 137
18 first addresses the priority of payment and calls for investors to be paid in advance
19 of taxes where, as here, the investor losses can be traced to the scheme. Directive
20 137 goes on to call for the IRS to respect the finding by the Court that the Receiver
21 holds the recovered proceeds in constructive trust for the victims. See Exhibit A.

22
23
24 ¹ The pre-receiver return for Amkey Global did show taxable income and income taxes
25 owing of \$128,968, which the Receiver paid. Later, the Receiver learned from a
26 computer generated IRS notice that the Receivership Entities had made an estimated
27 payment of \$115,200 prior to the appointment of a receiver, and net of late filing
28 penalties, the receivership estate is therefore entitled to a refund of \$104,220. The IRS
notice further stated that the IRS would not pay the refund due to the statute of
limitations, notwithstanding that the returns were only filed a year ago and the taxes
only recently paid.

² The IRS has gone so far as to assign this claim to a collection agency notwithstanding
the fact that the Receiver has been in continuous contact with IRS agents for the past
year.

1 To date, the IRS is simply ignoring Directive 137 and has failed and refused and
2 continues to fail and refuse to cooperate with the Receiver. The IRS has not agreed
3 to subordinate its claims, expedite their review of the Tax Returns under either
4 process, or simply agree to not pursue any further claims based upon the Tax
5 Returns. Instead, they sent their claim to a collection agency.

6 The Receiver has requested the assistance of the local Congressperson, Judy
7 Chu, (as many of the investors are in her congressional district) and will continue to
8 diligently attempt to secure agreements with the IRS, however, such agreements are
9 not within the Receiver's control. Seaman Declaration Par. 12.

10 As previously reported, the Receiver needs the IRS to either accept the Tax
11 Returns without further audits or amendments, or agree to be subordinated to the
12 payment of Investor Claimants and Administrative Expenses. The proposed
13 Amended Distribution Plan addresses these tax issues by the establishment of a Tax
14 Reserve and providing that future federal tax claims will be subordinate to the
15 claims of the Allowed Claims of investors and Administrative Expenses, and an
16 order that the Receiver shall have no personal liability for federal tax obligations
17 notwithstanding 31 U.S.C. Section 3713.

18 The proposed Amended Plan, attached as Exhibit "A" to the Seaman
19 Declaration, provides for the Tax Reserve to be set aside to pay for Administrative
20 Expenses including, but not limited to, Receiver's fees, professionals' fees, and
21 expected operating reserves plus funds to address any prospective IRS tax claim
22 arising out of or related to the Tax Returns. This amount reflects a conservative
23 good faith estimate of taxes due if the IRS disagreed with and proved that the
24 Receiver's Tax Returns were not accurate and that the basis of the assets was zero.
25 *Id.* at 13.

26 The balance of the funds, \$45,800,000, will be promptly distributed to holders
27 of Allowed Claims and represent 53.9% of investor claims. *Id.* at 14. Once the
28 Receiver is able to gain the cooperation of the IRS to either acknowledge that the

1 Tax Returns are accepted and not subject to further review or audit or the IRS agrees
2 to subordinate its claims, then the Tax Reserves will be distributed to pay for
3 Administrative Expenses and the Allowed Claims of Claimants.

4 **IV. ARGUMENT.**

5 **A. This Court Enjoys Broad Discretion To Approve The Amended**
6 **Plan.**

7 This Court, sitting in equity and having authority over a fiduciary estate res, is
8 vested with wide discretion to enter orders approving the claims process and the
9 plan for disposition of assets. “The power of a district court to impose a
10 receivership or grant other forms of ancillary relief does not in the first instance
11 depend on a statutory grant of power from the securities laws. Rather, the authority
12 derives from the inherent power of a court of equity to fashion effective relief.”
13 SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The “primary purpose of”
14 court-created fiduciary estates “is to promote orderly and efficient administration of
15 the estate by the district court for the benefit of creditors.” SEC v. Hardy, 803 F.2d
16 1034, 1038 (9th Cir. 1986). As the appointment of fiduciaries is authorized by this
17 Court’s equitable powers, so too is any distribution of assets to be undertaken
18 equitably and fairly. SEC v. Elliot, 953 F.2d 1560, 1569 (11th Cir. 1992).

19 Moreover, district courts have broad power to determine the appropriate
20 method of administering a fiduciary estate. As the Ninth Circuit has explained:

21 A district court’s power to supervise an ... [estate] ... and
22 to determine appropriate action to be taken in the
23 administration of the [estate] is extremely broad. The
24 district court has broad powers and wide discretion to
25 determine the appropriate relief...

26 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005); see also
27 SEC v. Topworth Int’l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court
28 affords ‘broad deference to the [district] court’s supervisory role and ‘we generally

1 uphold reasonable procedures instituted by the district court that serve th[e]
2 purpose’ of orderly and efficient administration of the [estate] for the benefit of
3 creditors.”).

4 Certainly the proposed amendments to the Distribution Plan fall within the
5 purview of this Court’s authority to administer the receivership estate. The
6 amendments to the Distribution Plan seek to remedy an unforeseen problem that has
7 resulted from delays and the failure of the IRS to promptly address the Tax Returns
8 or to otherwise cooperate with the Receiver to resolve any future tax claims.

9 In order to commence making payments to the Investor Claimants, the
10 Receiver proposes to establish a Tax Reserve to address future claims by the IRS.
11 In addition, the Receiver proposes to subordinate the claims of the IRS to payment
12 of the Investor Claimants. This is both consistent with the foregoing case law as
13 well as Directive 137.

14 **B. Tax Claims Are Subject To Subordination.**

15 Where, as here, a fiduciary is appointed by a Court at the behest of a federal
16 agency, the funds recovered by that fiduciary are ordinarily held in constructive trust
17 for the victim class that agency is charged with protecting. As a practical matter,
18 this means that the taxing entity claims , including those of the IRS are subordinate
19 to the interests of the investor victims with Allowed Claims as well as the
20 Administrative Expenses of the Receiver. See, e.g., FTC v. Crittenden, 823 F.Supp.
21 699, 703 (C.D. Cal. 1993) (estate funds held in constructive trust distributed to
22 former customers regardless of effect on IRS claims); FTC v. Ameridebt, Inc., 373
23 F.Supp.2d, 558, 565 (D. Md. 2005) (under the doctrine of constructive trust, “even if
24 the IRS ha[d] placed liens on Defendants’ assets, those liens would not attach to
25 property that was wrongfully obtained from consumers”); SEC v. Private Equity
26 Mgmt. Group, Inc., 2012 U.S. Dist. LEXIS 195213, *22-23 (C.D. Cal. September
27 28, 2012) (“Furthermore, the Court concludes that considerations of expedience and
28 of preserving [estate] funds for distribution to the defrauded investors ... favor”

1 treating a court-established res as held in constructive trust for investors); SEC v.
2 Stephenson Equity Util. Co., 138 F.Supp.2d 512, 532 (S.D.N.Y. 2001) (“A
3 constructive trust is a powerful remedy, as it cuts off the rights of general creditors
4 as well as the rights of the United States”).

5 Here, the Receiver’s Forensic Accounting Report, the action filed by the
6 Securities and Exchange Commission (“SEC”) and the criminal proceedings filed by
7 the United States Attorney, provide a strong foundation for a finding that the
8 Receiver holds the recovered Receivership Proceeds in constructive trust for the
9 benefit of the Claimants with Allowed Claims and Administrative Expenses. This is
10 also consistent with the policies of the Department of Justice and the SEC which
11 both reflect an intent to prioritize the interests of investor victims and to protect the
12 interests of the investors who purchased securities in and through the Receivership
13 Entities. The Receiver respectfully submits that he holds the funds he has recovered
14 to-date in constructive trust for the benefit of Investor Claimants. Accordingly, the
15 Receiver asserts that equity also requires that the IRS claim be subordinated to the
16 full payment of the Allowed Investor Claims and Administrative Expenses.

17 **V. CONCLUSION.**

18 For the foregoing reasons, the Receiver respectfully requests that this Court
19 enter an order:

- 20 1. Granting the Motion in its entirety;
- 21 2. Finding that the Receiver holds the Receivership Proceeds in
22 constructive trust for the benefit of Claimants with Allowed Claims and
23 Administrative Expenses;
- 24 3. Approving the Amended Distribution Plan, attached as Exhibit A to the
25 Seaman Declaration.
- 26 4. Authorizing the Receiver to set aside the Administrative Expense and
27 Tax Reserve of \$16,500,000.

28

1 5. Authorizing the Receiver to immediately distribute \$45,800,000, after
2 setting aside the Tax Reserve and funds for Administrative Expenses; and

3 6. Upon the resolution of the IRS’s claims or the running of the statute of
4 limitations related to the Tax Returns, the Receiver will file the motions required to
5 close the receivership including but not limited to seeking authority to pay
6 Administrative Expenses and the second and final distribution to the Claimants with
7 Allowed Claims.

8
9 Dated: April 22, 2022

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

10
11
12 By: /s/ David R. Zaro

13 DAVID R. ZARO
14 Attorneys for Receiver
15 Thomas A. Seaman
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

DEPARTMENT OF JUSTICE TAX DIVISION DIRECTIVE NO. 137

TAX CLAIMS AGAINST EMBEZZLERS, SWINDLERS, ETC. v. RECOVERY BY INVESTORS, DUPES, AND VICTIMS, ETC.

Often the Government's tax claim against an embezzler or perpetrator of a swindle can be collected only by reducing possible recovery by the investor, dupe or victim.* Where there is no statutory lien for either the federal tax claim or the claim of the investor or victim, the Tax Division will examine both the origin of the claim and whether the investor or victim can trace the lost property to the fund at issue. When both the tax claim and the claim of the investor or victim arise from the same transaction and the investor or victim can trace its property to the fund in issue, the Tax Division will recognize the priority of the claim of the investor or victim.

When the tax claim and the claim of the investor or victim do not arise from the same transaction, the Tax Division will recognize the priority of the claim of the investor or victim when the investor or victim can trace his claim to the property at issue and either (a) title never passed to the wrongdoer, such as in the case of theft, or (b) when a constructive trust, including all tracing requirements, has been imposed prior to assessment of the tax, or would be imposed and the tax has not been assessed.

If a federal court has ordered restitution as part of a criminal case, the Division will evaluate the priority of the federal tax liens against the claims of investors and victims in accordance with federal law, including the *Mandatory Victims Restitution Act*, 18 U.S.C. § 3613, which creates a federal restitution lien for the benefit of the victims of wrongdoing (which includes both defrauded investors and victims of theft), and the *Federal Tax Lien Act*, 26 U.S.C. §§ 6321-6323. In general, the Tax Division will follow the principle of "first in time is first in right."

Claims for taxes arising from administration of a receivership or from disposition of property in constructive trust should be paid as an expense of administration, "on or before the due date of the tax." 28 U.S.C. § 960; *see also*, 26

* As used here, Ainvestor@ denotes a willing participant or customer who was misled or defrauded by the perpetrator, and includes Adupes@ (see *Cunningham v. Brown*, 265 U.S. 1, 7 (1924)). AVictim@ denotes a person who did not willingly participate or willingly part with money or property, such as when there is theft, including embezzlement.

U.S.C. § 6012(b)(3). Such administration expenses are generally paid ahead of other claims against the assets of the receivership. When a receivership is insolvent, the administrative tax claims may be entitled to priority pursuant to 31 U.S.C. § 3713.

A mere showing by opposing counsel that allowing the Government's tax claim would prejudice the investor or victim in some way is not sufficient grounds for concession. While there is room for negotiation, the above principles should guide your analysis and negotiation. These cases are particularly susceptible to resolution by compromise. Even when our position is legally correct, a court may nevertheless seek to uphold a constructive trust wherever possible, by relaxing tracing requirements or employing other means to hold in favor of a sympathetic investor or victim. Accordingly, consistent with a realistic evaluation of litigating hazards, we should endeavor to reach reasonable settlement in these cases, rather than presenting unsympathetic claims to the court.

Although Tax Division civil attorneys, paralegals and support staff are not "Employees of the Department of Justice" for purposes of the *Justice For All Act of 2004*, 18 U.S.C. § 3771 and regulations, 45 C.F.R. § 45.10(a), Tax Division civil attorneys, paralegals and support staff act in accordance with and uphold the spirit of the *Justice For All Act of 2004* when they act in accordance with this Directive (including any update or revision), and analyze a case under these principles.

Date: 11/3/2008

/s/ Nathan J. Hochman

NATHAN J. HOCHMAN
Assistant Attorney General

PROOF OF SERVICE

Securities and Exchange Commission v. Steven Chen, USFIA, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-07425-RGK-PLA

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

On **April 22, 2022**, I caused to be served on all the parties to this action addressed as stated on the attached service list or as indicated below, the document entitled: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE RECEIVER’S AMENDED DISTRIBUTION PLAN**

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

OVERNIGHT DELIVERY: I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **April 22, 2021** at Los Angeles, California.



Martha Diaz

SERVICE LIST

Securities and Exchange Commission v. Steven Chen, USFIA, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-07425-RGK-PLA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Internal Revenue Service
c/o Tracy. L. Wilkison
Acting United States Attorney
Scott M. Garringer
Asst United States Attorney
Chief, Criminal Division
Richard E. Robinson
Assistant United States Attorney
Major Frauds Section
1100 United States Courthouse
312 N. Spring Street
Los Angeles, CA 90012
213.894.0713 P | 213.894.6269
Email: richard.robinson@usdoj.gov

Via Certified Mail – Return Receipt

Internal Revenue Service
c/o Leonard Brown
Bankruptcy Specialist
300 N. Los Angeles St MS5022
Los Angeles, CA 90012
213.372.4287 P | 855.863.4354 F

Via Fax

Leonard Brown
Bankruptcy Specialist
Internal Revenue Service
Insolvency Group 7
300 N. Los Angeles Street, 5022
Los Angeles, CA 90012

Via Certified Mail – Return Receipt

Ms. Evelyn Lopez
Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346

Via U.S. First Class Mail

IRS Department of the Treasury
Internal Revenue Service
Ogden, UT 84201-0049

Via U.S. First Class Mail

IRS Department of the Treasury
Internal Revenue Service
Ogden, UT 84201-0038

Via U.S. First Class Mail

IRS Department of the Treasury
Internal Revenue Service
Ogden, UT 84201-0036

Via U.S. First Class Mail

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Karl A. Racine
U.S. Attorney General
400 6th Street NW
Washington, DC 20001
202.727.3400 P | 202.347.8922 F
Email: oag@dc.gov

Via Certified Mail – Return Receipt