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19 Thomas A. Seaman

20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA  
22 WESTERN DIVISION

23 SECURITIES AND EXCHANGE  
24 COMMISSION,

25 Plaintiff,

26 v.

27 STEVE CHEN, USFIA, INC.,  
28 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, and  
QUAIL RANCH GOLF COURSE, LLC,

Defendants.

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO APPROVE RECEIVER'S  
DESTRUCTION OF DOCUMENTS AND  
RECORDS**

Date: March 27, 2023  
Time: 9:00 a.m.  
Ctrm: 850  
Judge Hon. R. Gary Klausner

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

9 **I. PROCEDURAL BACKGROUND.**

10 On September 28, 2015, the Receiver was appointed as the federal equity  
11 receiver for the Receivership Entities pursuant to the Temporary Restraining Order  
12 (the “TRO” or “Appointment Order”). The Receiver’s appointment was made  
13 permanent upon the entry of the Preliminary Injunction. Doc No. 14. On March 13,  
14 2017, the Court entered a Final Judgment as to Defendant Steve Chen. Doc.  
15 No. 210. On March 17, 2017, the Court entered an Amended Final Judgment as to  
16 the Receivership Entities. Doc. No. 219. Since his appointment, the Receiver has  
17 concluded monetization of all of the Receivership Entities’ assets. In doing so, the  
18 Receiver has recovered nearly \$80 million in gross receipts for the benefit of the  
19 receivership estate and investor claimants.

20 On January 29, 2018, the Receiver filed the Motion for Order: (1) Setting  
21 Claims Bar Date; (2) Approving Claims Forms; (3) Approving Claims Process; and  
22 (4) Approving Engagement of Third Party Claims Analysts (“Claims Process  
23 Motion”). [Doc. No. 299.] On March 7, 2018, the Court entered an order approving  
24 the claims process (“Claims Process Order”) and an order setting a claims bar date  
25 of June 29, 2018. [Doc. Nos. 307, 308.]

26 On December 19, 2019, the Receiver filed the Receiver’s Forensic  
27 Accounting Report (“Receiver’s Accounting”). The Receiver’s Accounting  
28 demonstrated that the Receivership Entities were operating a series of fraudulent

1 enterprises through which they raised \$197 million from investors. The Receiver’s  
2 Accounting also demonstrated that all assets taken into the possession of the  
3 Receiver and subsequently monetized had been acquired exclusively with investor  
4 funds. [Doc. 406.] Ultimately, The Receiver recovered over \$64 million for  
5 distribution to allowed claimants (the “Receivership Proceeds”), after payment of  
6 secured loans, operating expenses of the Receivership Entities and administrative  
7 expenses. The nature of the fraud and the resulting damage to the victims is further  
8 reflected in the Joint Statement Re: Agreed Amount of Restitution filed in the  
9 companion criminal proceeding, United States of America v. Steven Chen, United  
10 States District Court, Central District of California, Case No. 20-89-JFW. [Doc.  
11 62.]

12 On February 18, 2021, the Court granted the Receiver Thomas A. Seaman’s  
13 Motion to Approve (1) Receiver’s Recommendations as to Allowed Claims;  
14 (2) Receiver’s Recommendations as to Disputed Claims; (3) Authorization to Limit  
15 Scope of Receivership to Identified Receivership Entities; and (4) Distribution Plan  
16 (“Claim and Distribution Plan Order”). [Doc. No. 455.] After finally resolving the  
17 disputes with the IRS the Receiver filed a motion to approve the Amended  
18 Distribution Plan establishing that the Receivership Proceeds are held by the  
19 Receiver in a constructive trust and therefore can be distributed to the Investor  
20 Claimants instead of being held for the benefit of the IRS. [See Doc. No. 483, Doc.  
21 No. 484.]

22 As discussed below, the sole remaining tasks of the Receiver are the  
23 distribution of the Receivership Proceeds, destruction of records, and preparation of  
24 the final accounting.

## 25 **II. STATUS OF DISTRIBUTION AND CLOSING TASKS.**

### 26 **A. Distribution.**

27 The Court approved a distribution of over \$64,000,000. After allowing for  
28 \$100,000 for payroll claims and \$70,000 for 11<sup>th</sup> hour investors, at 100% of their

1 claims, the amount available on a pro rata basis to investor-victims is \$63,830,000.  
2 The distribution is in process and the Receiver has disbursed over \$51,373,108.

3 As reported previously, a large volume of checks have not been negotiated.  
4 In addition, many wire transfers have been returned by the receiving bank. Many of  
5 the un-negotiated payments have been declined due to anti-money laundering laws  
6 in many of the 50 countries in which investor-claimants are located. The Receiver  
7 has also faced several untoward attempts to cheat the distribution fund, including  
8 stolen checks being remotely deposited by non-claimants and fraudulent ACH  
9 (Automated Clearing House) withdrawals by non-claimants. Other fraudulent  
10 attempts to divert funds include claims filed on behalf legitimate victims by others  
11 who then attempt to divert the funds to themselves. These duplicitous efforts have  
12 also slowed the distribution and required the Receiver to diligently monitor  
13 disbursement activity.

14 There are approximately \$ 3,700,000 of outstanding distributions that are  
15 unresolved. The Receiver is also holding approximately \$ 3,400,000 in funds  
16 originally transmitted to investors/claimants with Allowed Claims where the  
17 approved Claimant with an Allowed Claim could not be located or where the  
18 distribution could not be processed because the proper recipient (e.g. the Court  
19 approved Claimant with an Allowed Claim), cannot be verified or the payment  
20 cannot be otherwise delivered.

21 The Receiver has met and conferred with the SEC to ensure that they are in  
22 agreement with the destruction of the pre-receiver books and records, including the  
23 back office database, and the SEC agrees with the Receiver's recommendation.

24 Similarly, the Receiver consulted with the Office of the United States  
25 Attorney ("AUSA"). The AUSA indicated that there is a pending criminal matter  
26 against a person that did business with the Defendant and who received funds from  
27 the Receivership Entities. The Receiver may be asked to testify to these payments if  
28 the matter proceeds to trial which is currently set for April 2023.

1           **B. Closing Tasks For The Receivership and Destruction of Records.**

2           Aside from concluding the distribution of Receivership Proceeds described  
3 above, the remaining receivership tasks include destruction of records, the final  
4 accounting and fee applications and discharge of the Receiver. The Receiver has  
5 determined that he no longer needs the Receivership Entities' hard copy documents  
6 or the electronic records. As such, in anticipation of concluding the case and to save  
7 the cost of preserving or maintaining the records pending the conclusion of the case,  
8 the Receiver recommends destroying the documents and electronic records.

9           The Receiver has been renting a satellite office to house the original USFIA  
10 Inc. back office servers and the hard copy paper records for the Receivership  
11 Entities. It costs approximately \$2,600 per month for rent, insurance, and utilities.  
12 The landlord for the satellite office has terminated the lease effective March 31,  
13 2023. With the IRS claim having been resolved, the investor claims having been  
14 established, the criminal matters concluded, and no pending actions by the Receiver,  
15 there is no need to maintain the back office database on the back office servers or  
16 physical books and records. Moreover, the Receivership Entities ceased doing  
17 business in 2015 and so there is no business reason to maintain the books and  
18 records.

19           The Receiver wishes to destroy the books and records and avoid the cost of  
20 leasing new storage premises, moving the servers and books and records and,  
21 thereafter, maintaining the servers and records. Accordingly, the Receiver seeks  
22 approval to destroy the books and records of the Receivership Entities now.

23           **III. ARGUMENT.**

24           This Court, sitting in equity and having authority over a fiduciary estate res, is  
25 vested with wide discretion to enter orders in the furtherance of and for the benefit  
26 of the receivership. "The power of a district court to impose a receivership or grant  
27 other forms of ancillary relief does not in the first instance depend on a statutory  
28 grant of power from the securities laws. Rather, the authority derives from the

1 inherent power of a court of equity to fashion effective relief.” SEC v. Wencke, 622  
2 F.2d 1363, 1369 (9th Cir. 1980). The “primary purpose of” court-created fiduciary  
3 estates “is to promote orderly and efficient administration of the estate by the district  
4 court for the benefit of creditors.” SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir.  
5 1986). As the appointment of fiduciaries is authorized by this Court’s equitable  
6 powers, so too is any distribution of assets to be undertaken equitably and fairly.  
7 SEC v. Elliot, 953 F.2d 1560, 1569 (11th Cir. 1992).

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

10 A district court’s power to supervise an ... [estate] ... and  
11 to determine appropriate action to be taken in the  
12 administration of the [estate] is extremely broad. The  
13 district court has broad powers and wide discretion to  
14 determine the appropriate relief...

15 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005); see also  
16 SEC v. Topworth Int’l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court  
17 affords ‘broad deference to the [district] court’s supervisory role and ‘we generally  
18 uphold reasonable procedures instituted by the district court that serve th[e]  
19 purpose’ of orderly and efficient administration of the [estate] for the benefit of  
20 creditors.”).

21 The Receiver does not believe it is necessary to store and maintain the hard  
22 copy and electronic records for the Receivership Entities. The Receiver no longer  
23 needs them and there is no business reason to pay for the cost to store and maintain  
24 the servers which hold most of the electronic data.

#### 25 **IV. CONCLUSION.**

26 For the foregoing reasons, the Receiver respectfully requests that this Court  
27 enter an order:

- 28 1. Granting the Motion in its entirety;

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2. Authorizing the Receiver to destroy the physical and electronic records.

Dated: February 27, 2023

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DAVID R. ZARO  
EDWARD G. FATES

By:           /s/ David R. Zaro          

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Thomas A. Seaman