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11
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.,
20 ABORELL MGMT I, LLC, ABORELL
21 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
22 ESTATE, LLC, ALLIANCE
NGN, INC., APOLLO REIT I, INC.,
23 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 (A) APPROVAL OF
SALE OF RESIDENTIAL REAL
PROPERTY (FAIRVIEW
CONDOMINIUM), AND
(B) AUTHORITY TO PAY
BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: March 6, 2017
Time: 9:00 a.m.
Ctrm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on March 6, 2017, 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, the Court will consider the interim applications
5 of Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for
6 Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell
7 Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real
8 Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,
9 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,
10 and their subsidiaries and affiliates (collectively, "Receivership Entities"), hereby
11 moves the Court for (A) approval of sale of residential real property (Fairview
12 Condominium), 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, the
15 documents and pleadings already on file in this action, and upon such further oral
16 and documentary evidence as may be presented at the time of the hearing.

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

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

24 Dated: February 3, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed by this Court with full powers of an equity
4 receiver, and ordered, among other things, to take possession of and assume
5 authority and control over the receivership estate, including that certain real property
6 located at and commonly known as 919 Fairview Avenue, Unit B ("Fairview
7 Condominium") – a single-family residence located in Arcadia, California.
8 Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

9 The Fairview Condominium was acquired by Ahome Real Estate, LLC on
10 June 11, 2015, for \$918,000. *Id.*, ¶ 4. The condominium is approximately
11 1,550 square feet and has three bedrooms. *Id.* Shortly after his appointment, the
12 Receiver secured the Fairview Condominium. *Id.* at ¶ 5. There was a tenant living
13 in the property – Yang Zhou – but she was not paying the monthly rent (\$2,800). *Id.*
14 When Ms. Zhou refused to vacate the property, the Receiver initiated an unlawful
15 detainer action and when she failed to respond, the Court entered her default. *Id.* In
16 February 2016, Ms. Zhou stipulated to vacate the property and paid \$8,944 to the
17 Receiver in settlement of the unpaid rent. *Id.*

18 Given that maintaining the Fairview Condominium entails significant
19 carrying costs to the receivership estate, including costs for maintenance, insurance,
20 and property taxes, and that the asset has no business purpose for the benefit of the
21 Receivership Entities, the Receiver listed the property for sale through licensed
22 broker, Secured Properties ("Broker"). *Id.* at ¶ 6. The property was listed for
23 125 days before the purchase contract was executed. After careful review, a recent
24 appraisal, current comparable listings in the same complex, offers received ranging
25 from \$715,000 to \$810,000,¹ and negotiations with the offering parties, the Receiver
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28 ¹ The \$810,000 offer was contingent on financing and the buyer was unable to demonstrate that it had sufficient cash for the down payment.

1 accepted an all cash offer from Ping Jiang ("Buyer") at \$795,000, subject to Court
2 approval. There are no contingencies to the sale other than Court approval. *Id.*

3 In accordance with the Receiver's acceptance, the Receiver and Buyer entered
4 into a Residential Purchase Agreement and Joint Escrow Instructions
5 ("Agreement"). *Id.* at ¶ 7. Among other things, the Agreement specifies that the
6 sale is subject to Court approval, is on an "AS IS" basis, and will be made with all
7 cash. *Id.* The Agreement is attached as Exhibit A to the Seaman Declaration filed
8 herewith.

9 In his reasonable business judgment, the Receiver believes that the
10 Agreement, obtained through the commercially reasonable and customary method of
11 listing the property with a licensed broker and after arm's length negotiations with
12 Buyer, reflects the fair market value of the Fairview Condominium. *Id.* at ¶ 8.
13 Accordingly, the Receiver respectfully requests this Court grant this Motion and
14 approve: (1) the sale of the Fairview Condominium and (2) payment of the Broker's
15 commission.

16 **II. PROCEDURAL BACKGROUND**

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

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1 **III. TERMS OF THE AGREEMENT**

2 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.
3 Its terms are summarized as follows:²

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

6 **Purchase Price.** \$795,000.

7 **Closing Date.** Escrow to close once Court approval of the sale is granted.

8 **Deposit.** Buyers have deposited \$23,670 into escrow, refundable only if the
9 Court does not approve the sale to Buyer.

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

12 **Broker's Commission.** By separate agreement, the Receiver has agreed,
13 subject to Court approval, to pay Broker a commission of 5% of the final purchase
14 price. Pursuant to that agreement, Broker will compensate cooperating and referring
15 brokers, as applicable. Broker has invested substantial time into preparing the
16 Fairview Condominium for sale, locating potential purchasers, marketing the
17 property to them, negotiating terms, and preparing sale documents.

18 **IV. ARGUMENT**

19 "The power of a district court to impose a receivership or grant other forms of
20 ancillary relief does not in the first instance depend on a statutory grant of power
21 from the securities laws. Rather, the authority derives from the inherent power of a
22 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
23 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
24 and efficient administration of the estate by the district court for the benefit of
25 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
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28 ² The terms of the Agreement are summarized herein for convenience only. In the
event of any conflict between the Agreement and the summary provided herein,
the Agreement governs and controls.

1 of a receiver is authorized by the broad equitable powers of the court, any
2 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
3 953 F.2d 1560, 1569 (11th Cir. 1992).

4 District courts have the broad power of a court of equity to determine the
5 appropriate action in the administration and supervision of an equity receivership.
6 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
7 Circuit explained:

8 A district court's power to supervise an equity receivership
9 and to determine the appropriate action to be taken in the
10 administration of the receivership is extremely broad. The
11 district court has broad powers and wide discretion to
12 determine the appropriate relief in an equity receivership.
13 The basis for this broad deference to the district court's
14 supervisory role in equity receiverships arises out of the
15 fact that most receiverships involve multiple parties and
16 complex transactions. A district court's decision
17 concerning the supervision of an equitable receivership is
18 reviewed for abuse of discretion.

14 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
15 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
16 and 'we generally uphold reasonable procedures instituted by the district court that
17 serve th[e] purpose' of orderly and efficient administration of the receivership for
18 the benefit of creditors.").

19 Accordingly, this Court has broad equitable powers and discretion in
20 formulating procedures, schedules and guidelines for administration of the
21 receivership estate and disposition of receivership assets.

22 **A. The Proposed Sale**

23 It is generally conceded that a court of equity having custody and control of
24 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,
25 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
26 discretion to determine relief in an equity receivership). "The power of sale
27 necessarily follows the power to take possession and control of and to preserve
28 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144

1 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
2 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.
3 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
4 equity orders property in its custody to be sold, the court itself as vendor confirms
5 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*
6 *Receivers* § 487).

7 "A court of equity, under proper circumstances, has the power to order a
8 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
9 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
10 Clark, *Treatise on Law & Practice of Receivers* § 500. To that end, a federal court
11 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*
12 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
13 allowing time to redeem property after a foreclosure sale not applicable in a
14 receivership sale).

15 Generally, when a court-appointed receiver is involved, the receiver, as agent
16 for the court, should conduct the sale of the receivership property. *Blakely Airport*
17 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
18 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
19 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
20 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.
21 "In authorizing the sale of property by receivers, courts of equity are vested with
22 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
23 (9th Cir. 1925).

24 Here, the proposed sale to Buyer should be approved. First, the Receiver
25 believes that the purchase price paid for the Fairview Condominium by Ahome Real
26 Estate exceeded the fair market value of the property. The Receiver obtained an
27 independent appraisal of the property, which estimated the value as \$850,000. The
28 appraisal was based in part, however, on the list price of a similar but larger unit in

1 the building for \$875,000. After the appraisal was received, the seller of the larger
2 unit dropped its list price to \$850,000, and the unit sold in January 2017 for
3 \$818,000. Seaman Decl., ¶ 9.

4 The Fairview Condominium has been fully exposed to the market by Broker
5 over five months through the customary means of listing the property on the
6 Multiple Listing Service ("MLS"), advertising, and holding several open houses. In
7 response, the Receiver received and evaluated multiple offers, including that
8 submitted by Buyer. The Receiver further negotiated the terms of the sale,
9 including countering the offer from Buyer at a higher price, as reflected in the
10 Agreement. *Id.* at ¶ 10.

11 Through this process, the Receiver obtained Buyer's final offer and
12 agreement to purchase the Fairview Condominium at the price of \$795,000. This is
13 consistent with the very recent sale of the larger unit in the same building for
14 \$818,000. *Id.* at ¶ 11. Therefore, the Receiver believes the proposed sale represents
15 the fair market value and will generate the highest and best recovery from the
16 Fairview Condominium. *Id.* Thus, the Receiver respectfully requests that this Court
17 approve the sale to Buyer.

18 **B. Further Notices/Appraisals Should Be Waived**

19 Sales of real property out of receivership are governed by 28 U.S.C. § 2001,
20 which provides that notice shall be given "by publication or otherwise as the court
21 directs . . ." 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the court
22 with discretion in directing the terms and conditions of the public sale." *Keybank*
23 *Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S. Dist. LEXIS 157828, *4
24 (M.D. La. 2012); *see also U.S. v. Little*, 2008 U.S. Dist. LEXIS 93467, *4-5
25 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in setting the terms
26 and conditions of a sale pursuant to 28 U.S.C. § 2001."); *U.S. v. Heasley*, 283 F.2d
27 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C. § 2001(b), "the matter
28 of confirming a judicial sale rests in the sound judicial discretion of the trial

1 court . . ."); *U.S. v. Peters*, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C.
2 § 2001(a) authorizes a court to direct the terms and conditions of the sale).

3 Here, the Fairview Condominium has been fully exposed to the market by
4 posting of the property on the MLS, holding open houses, and other customary
5 marketing efforts conducted by Broker. The Receiver submits that further mailing
6 or publication of notice, or obtaining independent appraisals imposes significant
7 costs to the receivership estate with little to no corresponding benefit. Accordingly,
8 to the extent 28 U.S.C. §§ 2001, 2002 and Local Rule 66-7 require further mailing
9 or publication of notice, appraisals, or other procedures, such provisions should be
10 waived. Seaman Decl., ¶ 12.

11 **C. Additional Relief**

12 Pursuant to its broad equitable powers with respect to the administration of
13 receivership assets, the Receiver requests that the Court authorize payment from the
14 proceeds of sale of the Fairview Condominium, the valid liens,³ taxes, and any other
15 claims on the property, subject to any objections to such liens, taxes, or claims by
16 the Receiver.

17 Finally, the Receiver requests authority to pay Broker a commission in the
18 amount of 5% of the final purchase price. Based on his experience in real estate
19 transactions and consultation with Broker and counsel, the Receiver believes that
20 such commission is commercially reasonable and consistent with real estate industry
21 standards. *Id.* at 13.

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28 ³ The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.

1 **V. CONCLUSION**

2 For the reasons set forth herein, the Receiver respectfully requests entry of an
3 Order approving and authorizing: (1) sale of the Fairview Condominium to Buyer,
4 and (2) payment of 5% in commission to Broker from the sale proceeds.

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6 Dated: February 3, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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8 By: /s/ Edward Fates
9 EDWARD G. FATES
10 Attorneys for Temporary Receiver
11 THOMAS A. SEAMAN
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