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

27 Defendants.  
28

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

**NOTICE OF MOTION AND  
MOTION FOR (A) APPROVAL OF  
SALE OF RESIDENTIAL REAL  
PROPERTY (ALHAMBRA  
GARDENS PROPERTY), AND  
(B) AUTHORITY TO PAY  
BROKER'S COMMISSION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: July 10, 2017  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on July 10, 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, 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 (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of  
11 sale of residential real property (Alhambra Gardens Property), and (B) authority to  
12 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 21 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: June 8, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:                   /s/ Edward Fates

EDWARD G. FATES  
Attorneys for Receiver  
Thomas A. Seaman

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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 all assets of the receivership estate, including that certain  
6 real property located at 1221 S. Atlantic Boulevard, Alhambra, California  
7 ("Property") – a 36-unit apartment complex. The Property was purchased on  
8 December 22, 2011, for \$5.22 million by Apollo REIT II, LLC. The purchase price  
9 was comprised of cash in the amount of \$2.82 million and a mortgage in the amount  
10 of \$2.4 million. Declaration of Thomas A. Seaman filed herewith ("Seaman  
11 Decl."), ¶ 3.

12 The Property, a 36-unit apartment complex built in 1961, is fully occupied.  
13 Repair work is frequently needed, particularly as units turn over. The roof needs to  
14 be replaced and temporary repairs have been made to avoid this capital expenditure.  
15 Operating expenses for repairs and maintenance are high. The Receiver has spent  
16 \$109,042 on repairs and maintenance since his appointment. In addition, the  
17 Receiver has made debt service payments on the first mortgage totaling \$239,211.  
18 The Property was appraised at \$6 million in November 2016. After reviewing  
19 recent comparable sales and similar property listings, the Receiver listed the  
20 Property for sale with a licensed broker, Secured Properties, Inc. ("Broker"), on  
21 May 10, 2017, at \$6.2 million. *Id.* at ¶ 4.

22 The Broker received numerous inquiries and 14 parties bid on the Property.  
23 The Broker worked hard to get prospective buyers to increase their offers. As a  
24 result, four of the prospective buyers increased their offers and the Receiver  
25 ultimately entertained 18 offers. The Receiver's highest counter offer of \$7,150,000  
26 was accepted by Winstar Properties, Inc. ("Buyer"), whose offer was non-contingent  
27 (other than Court approval) and who provided proof of funds sufficient to close.  
28 Offers ranged from \$6.2 million to \$7.35 million, including one offer at

1 \$7.25 million. The \$7.35 million offer was withdrawn and the \$7.25 million buyer  
2 would not conduct due diligence until the Court approved the transaction, thus it  
3 could still withdraw from the sale even if Court approval was granted, which did not  
4 comport with the terms of the Receiver's sale contract. *Id.* at ¶ 5.

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

11 In his reasonable business judgment, the Receiver believes the Agreement,  
12 obtained through the commercially reasonable and customary method of listing the  
13 property with a licensed broker and after arm's length negotiations with Buyer,  
14 reflects the fair market value of the Property. Moreover, the sale is subject to  
15 overbid and public auction procedures discussed below. *Id.* at ¶ 7. Accordingly, the  
16 Receiver respectfully requests this Court grant this Motion and approve and  
17 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

## 18 **II. PROCEDURAL BACKGROUND**

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

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:<sup>1</sup>

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

6 **Purchase Price.** \$7,150,000.

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

8 **Deposit.** Buyers have deposited \$214,500 into escrow, refundable only if the  
9 Court does not approve the sale to Buyer.

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

11 **Broker's Commission.** By separate agreement, the Receiver has agreed,  
12 subject to Court approval, to pay Broker a commission of 4.5% of the final purchase  
13 price if the purchaser is represented by a different broker, or 3.5% if the purchaser is  
14 also represented by Broker. Pursuant to that agreement, Broker will compensate  
15 cooperating and referring brokers, as applicable. Broker has invested substantial  
16 time into preparing the Property for sale, locating potential purchasers, marketing  
17 the property to them, negotiating terms, and preparing sale documents. In the  
18 proposed transactions, Buyer is represented by Broker, so the applicable  
19 commission is 3.5% of the final purchase price.

20 **IV. 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 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 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). As the appointment  
3 of a receiver is authorized by the broad equitable powers of the court, any  
4 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
5 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

19 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
20 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
21 and 'we generally uphold reasonable procedures instituted by the district court that  
22 serve th[e] purpose' of orderly and efficient administration of the receivership for  
23 the benefit of creditors.").

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

27 **A. The Proposed Sale**

28 It is generally conceded that a court of equity having custody and control of  
property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,  
*supra*, 953 F.2d at 1566 (finding that the District Court has broad 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

1 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
2 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
3 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.  
4 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of  
5 equity orders property in its custody to be sold, the court itself as vendor confirms  
6 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*  
7 *Receivers* § 487).

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

16 Generally, when a court-appointed receiver is involved, the receiver, as agent  
17 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
18 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
19 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
20 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
21 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.  
22 "In authorizing the sale of property by receivers, courts of equity are vested with  
23 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357  
24 (9th Cir. 1925).

25 **B. 28 U.S.C. § 2001**

26 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of  
27 real property under subsection (a) and specific requirements for private sales of real  
28 property under subsection (b). Although both involve unnecessary cost and delay,

1 the cost and delay of a public sale are significantly less than those for a private sale.  
2 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
3 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
4 public sale; or (2) property may be sold in a private sale, provided that three separate  
5 appraisals have been conducted, the terms are published in a circulated newspaper  
6 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
7 price."). Therefore, by proceeding under Section 2001(a), the receivership estate  
8 can avoid the significant costs and delay of (a) the Court having to appoint three  
9 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

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

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

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

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

26 The notice of sale is sufficient if it describes the property and the time, place,  
27 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
28 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to

1 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
2 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
3 of the Receiver, that it has the current ability to consummate the purchase of the  
4 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
5 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

## 6 V. DISCUSSION

7 Here, the proposed sale to Buyer should be approved. The Property has been  
8 fully and properly exposed to the market by Broker through the customary means of  
9 listing the property on the Multiple Listing Service ("MLS"), listing services for  
10 multi-unit income properties such as Loopnet and CoStar, advertising, and holding  
11 open houses. In response, the Receiver received multiple competitive offers for the  
12 Property. The Receiver believes the proposed sale represents the fair market value  
13 and will generate the highest and best recovery from the Property. Seaman Decl.,  
14 ¶ 8.

15 Moreover, the proposed sale is subject to overbid and public auction. The  
16 Receiver proposes to conduct a public auction consistent with the requirements of  
17 Section 2001(a). Specifically, the Receiver will publish the following notice of the  
18 sale once a week for four weeks in the San Gabriel Valley Daily Tribune:

19 In the action pending in U.S. District Court for the Central District  
20 of California, Case No. 16-CV-07425-RGK-PLA, Securities and  
21 Exchange Commission v. Steve Chen et al., notice is hereby given  
22 that the court-appointed receiver will conduct a public auction for  
23 the residential real property located at 1221 S. Atlantic Blvd.,  
24 Alhambra, California. Sale is subject to Court confirmation after the  
25 auction is held. Minimum bid price is \$7,500,000. The auction will  
26 take place on July 10, 2017, at 11:00 a.m. at the property located at  
27 1221 S. Atlantic Blvd., Alhambra, California. To be allowed to  
28 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 \$214,500,  
and proof of funds. All bidders must be qualified by 3:00 p.m. PST  
on June 30, 2017, by submitting the required materials to the  
Thomas Seaman at 3 Park Plaza, Suite 550, Irvine California, 92614.  
If interested in qualifying as a bidder, please contact Jay Chu (213)  
389-5888 x 301 or [jchu@securedproperties.com](mailto:jchu@securedproperties.com).

28 *Id.* at ¶ 9.

1 In order to conduct an orderly auction and provide sufficient time for the  
2 publication of notices discussed above, the Receiver will require bidders to complete  
3 the above steps by June 30, 2017 ("Bid Qualification Deadline"), and conduct the  
4 live public auction at the Property at 11:00 a.m. on July 10, 2017. *Id.* at ¶ 10.

5 The Receiver will inform all interested persons of the opportunity to overbid  
6 at the public auction, provided they qualify themselves to bid by the Bid  
7 Qualification Deadline by (a) signing a purchase and sale agreement for the  
8 properties on the same terms and conditions as Buyer, but with a purchase price of  
9 at least \$7,500,000, (b) providing the Receiver with an earnest money deposit of  
10 \$214,500, and (c) providing proof of funds necessary to close the sale transaction in  
11 the form of a current bank statement, cashier's check delivered to the Receiver, or  
12 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 11.

13 In the event one or more prospective purchasers qualify themselves to bid, the  
14 Receiver will promptly notify the Court and the auction will be conducted at the  
15 Property as noted above. Bids will be allowed in increments of \$30,000. The  
16 Receiver will then file a notice advising the Court of the result of the auction  
17 (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest money  
18 deposits provided by bidders who are unsuccessful will be promptly returned to  
19 them. If Buyer is not the successful bidder, it shall be paid a break-up fee of  
20 \$35,000 in addition to the return of its earnest money deposit. In the event no  
21 prospective purchasers qualify themselves to bid by the Bid Qualification Deadline,  
22 the Receiver will notify the Court and seek entry of an order approving the sale to  
23 Buyer. *Id.* at ¶ 12.

24 **A. Additional Relief**

25 Pursuant to its broad equitable powers with respect to the administration of  
26 receivership assets, the Receiver requests that the Court authorize payment from the  
27  
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1 proceeds of the sale of the Property of the valid liens,<sup>2</sup> taxes, and any other claims  
2 on the property, subject to any objections to such liens, taxes, or claims by the  
3 Receiver.

4 In connection with the sale closing, the Receiver will assign the leases in  
5 place at the Property to the Buyer and transfer the security deposits associated with  
6 such leases to the Buyer. The rents collected and expenses incurred for the Property  
7 during the month in which closing occurs will be prorated between the Receiver and  
8 Buyer and settled through escrow.

9 Finally, the Receiver requests authority to pay Broker a commission in the  
10 amount of 3.5% of the final purchase price or 4.5% in the event of a successful  
11 overbidder represented by a different broker. Based on his extensive experience in  
12 real estate transactions, the Receiver believes that such commission is commercially  
13 reasonable and consistent with real estate industry standards. *Id.* at ¶ 13.

14 **VI. CONCLUSION**

15 For the reasons set forth herein, the Receiver respectfully requests entry of an  
16 Order approving and authorizing: (1) sale of the Property to Buyer, and (2) payment  
17 of a 3.5% commission to Broker from the sale proceeds or 4.5% commission in the  
18 event of a sale to a successful overbidder represented by a different broker.

19

20 Dated: June 8, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

21

By:           /s/ Edward Fates          

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EDWARD G. FATES  
Attorneys for Receiver  
THOMAS A. SEAMAN

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28 <sup>2</sup> As noted above, there is a mortgage on the Property, which will be paid in full  
directly from escrow. The Receiver is not aware of any other valid liens.