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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 SECURITIES AND EXCHANGE
COMMISSION,
18 Plaintiff,
19 v.
20 STEVE CHEN, USFIA, INC.,
ALLIANCE FINANCIAL
21 GROUP, INC., AMAUCTION, INC.,
ABORELL MGMT I, LLC, ABORELL
22 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
23 ESTATE, LLC, ALLIANCE
24 NGN, INC., APOLLO REIT I, INC.,
APOLLO REIT II, LLC, AMKEY, INC.,
25 US CHINA CONSULTATION
ASSOCIATION, and QUAIL RANCH
26 GOLF COURSE, LLC,
27 Defendants.

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

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

Date: September 18, 2017
Time: 9:00 a.m.
Ctm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on September 18, 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 (Balboa Drive Property), and (B) authority to pay
12 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: August 21, 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 849 Balboa Drive, Arcadia, California ("Property") – a
7 single-family residence. Declaration of Thomas A. Seaman filed herewith
8 ("Seaman Decl."), ¶ 3.

9 The Property was purchased in 2003 by Li Zhao aka Jennifer Zhao, the
10 mother of Defendant Steve Chen's son. On February 3, 2014, the Property was
11 purchased from Ms. Zhao for \$1,250,000 by Ahome Real Estate, LLC. In
12 October 2014, the Property was transferred for no payment to Mr. Chen and his wife
13 Luyang Li. *Id.* at ¶ 4.

14 The Property is approximately 3,255 square feet and has four bedrooms.
15 When the Receiver first learned of the Property, tenants were living at the Property.
16 Later, when the Receiver attempted to inspect the Property, the tenants had
17 abandoned the Property. *Id.* at ¶ 5. In March 2017, the Receiver and Mr. Chen
18 stipulated that title to the Property (along with one other residential property) would
19 be vested in the Receiver as an asset of the receivership estate. Dkt. No. 214. The
20 Court approved the stipulation on March 16, 2017. Dkt. No. 215.

21 Given that holding and maintaining the Property entails significant carrying
22 costs to the receivership estate, including costs for maintenance, insurance, and
23 property taxes, and that the Property has no business purpose for the benefit of the
24 Receivership Entities, the Receiver listed the Property for sale through licensed
25 broker, Keller Williams Realty Pasadena ("Broker"). *Id.* at ¶ 6.

26 The Receiver obtained an appraisal, which indicated a value of \$1,620,000.
27 After reviewing recent comparable sales and similar property listings and with
28 Broker, the Receiver listed the Property for sale on April 24, 2017, at \$1,500,000.

1 The property was pre-marketed for ten days prior to the listing. There were three
2 open houses, and over 100 prospective buyers viewed the Property. Multiple offers
3 were received, the best of which was an all cash offer for \$1,580,000 from Chi Pun
4 Benny Chan and Wah Amanda Lee (collectively "Buyer"). The Receiver countered
5 the offer at \$1,600,000, which Buyer accepted, subject to overbid and Court
6 approval. *Id.* at ¶ 7.

7 In accordance with Buyer's acceptance, the Receiver and Buyer entered into a
8 Residential Purchase Agreement and Joint Escrow Instructions ("Agreement").
9 Among other things, the Agreement specifies the sale is subject to Court approval
10 and is on an "AS IS" basis. The Agreement is attached as Exhibit A to the Seaman
11 Declaration filed herewith. Buyer has recently removed all contingencies for the
12 sale, other than Court approval. *Id.* at ¶ 8.

13 In his reasonable business judgment, the Receiver believes the Agreement,
14 obtained through the commercially reasonable and customary method of listing the
15 property with a licensed broker and after arm's length negotiations with Buyer,
16 reflects the fair market value of the Property. Moreover, the sale is subject to
17 overbid and public auction procedures discussed below. *Id.* at ¶ 9. Accordingly, the
18 Receiver respectfully requests this Court grant this Motion and approve and
19 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

20 **II. PROCEDURAL BACKGROUND**

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

1 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the
2 TRO and PI Order are collectively referred to as the "Appointment Orders."

3 **III. TERMS OF THE AGREEMENT**

4 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.
5 Its terms are summarized as follows:¹

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

8 **Purchase Price.** \$1,600,000.

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

10 **Deposit.** Buyers have deposited \$75,000 into escrow, refundable only if the
11 Court does not approve the sale to Buyer.

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

13 **Broker's Commission.** By separate agreement, the Receiver has agreed,
14 subject to Court approval, to pay Broker a commission of 5% of the final purchase
15 price if the purchaser is represented by a different broker, or 4% if the purchaser is
16 also represented by Broker. Pursuant to that agreement, Broker will compensate
17 cooperating and referring brokers, as applicable. Broker has invested substantial
18 time into preparing the Property for sale, locating potential purchasers, marketing
19 the property to them, negotiating terms, and preparing sale documents. In the
20 proposed transactions, Buyer is represented by a different broker, so the applicable
21 commission is 5% of the final purchase price.

22 **IV. ARGUMENT**

23 "The power of a district court to impose a receivership or grant other forms of
24 ancillary relief does not in the first instance depend on a statutory grant of power
25 from the securities laws. Rather, the authority derives from the inherent power of a
26

27 _____
28 ¹ 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 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
2 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
3 and efficient administration of the estate by the district court for the benefit of
4 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
5 of a receiver is authorized by the broad equitable powers of the court, any
6 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
7 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

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

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

29 **A. The Proposed Sale**

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

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

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

18 Generally, when a court-appointed receiver is involved, the receiver, as agent
19 for the court, should conduct the sale of the receivership property. *Blakely Airport*
20 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
21 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
22 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
23 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.
24 "In authorizing the sale of property by receivers, courts of equity are vested with
25 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
26 (9th Cir. 1925).

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1 **B. 28 U.S.C. § 2001**

2 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
3 real property under subsection (a) and specific requirements for private sales of real
4 property under subsection (b). Although both involve unnecessary cost and delay,
5 the cost and delay of a public sale are significantly less than those for a private sale.
6 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
7 ("Section 2001 sets out two possible courses of action: (1) property may be sold in
8 public sale; or (2) property may be sold in a private sale, provided that three separate
9 appraisals have been conducted, the terms are published in a circulated newspaper
10 ten days prior to sale, and the sale price is no less than two-thirds of the valued
11 price."). Therefore, by proceeding under Section 2001(a), the receivership estate
12 can avoid the significant costs and delay of (a) the Court having to appoint three
13 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

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

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

26 If such realty is situated in more than one county, state, district or
27 circuit, such notice shall be published in one or more of the counties,
28 states, or districts wherein it is situated, as the court directs. The
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.

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

1 The notice of sale is sufficient if it describes the property and the time, place,
2 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
3 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
4 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
5 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction
6 of the Receiver, that it has the current ability to consummate the purchase of the
7 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
8 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

9 **V. DISCUSSION**

10 Here, the proposed sale to Buyer should be approved. The Property has been
11 fully and properly exposed to the market by Broker through the customary means of
12 listing the property on the Multiple Listing Service ("MLS"), advertising, and
13 holding open houses. In response, the Receiver received an offer above the full
14 asking price within two months of listing the property. The proposed purchase price
15 is consistent with the appraised value in September 2016. The Receiver believes the
16 proposed sale represents the fair market value and will generate the highest and best
17 recovery from the Property. Seaman Decl., ¶ 10.

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

22 In the action pending in U.S. District Court for the Central District of
23 California, Case No. 16-CV-07425-RGK-PLA, Securities and
24 Exchange Commission v. Steve Chen et al., notice is hereby given
25 that the court-appointed receiver will conduct a public auction for the
26 residential real property located at 849 Balboa Drive, Arcadia
27 California. Sale is subject to Court confirmation after the auction is
28 held. Minimum bid price is \$1,680,000. The auction will take place
on September 18, 2017, at 11:00 a.m. at the property located at
849 Balboa Drive, Arcadia, California. 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 \$75,000, and proof
of funds. All bidders must be qualified by 4:00 p.m. PST on
September 11, 2017, by submitting the required materials to the

1 Thomas Seaman Company at 3 Park Plaza, Suite 550, Irvine
2 California, 92614. If interested in qualifying as a bidder, please
contact Eva Lin at (626) 807-6581 or Eva@LinRealtyGroup.com.

3 *Id.* at ¶ 11.

4 In order to conduct an orderly auction and provide sufficient time for the
5 publication of notices discussed above, the Receiver will require bidders to complete
6 the above steps by September 11, 2017 ("Bid Qualification Deadline"), and conduct
7 the live public auction at the Property at 11:00 a.m. on September 18, 2017. *Id.* at
8 ¶ 12.

9 The Receiver will inform all interested persons of the opportunity to overbid
10 at the public auction, provided they qualify themselves to bid by the Bid
11 Qualification Deadline by (a) signing a purchase and sale agreement for the
12 properties on the same terms and conditions as Buyer, but with a purchase price of
13 at least \$1,680,000, (b) providing the Receiver with an earnest money deposit of
14 \$75,000, and (c) providing proof of funds necessary to close the sale transaction in
15 the form of a current bank statement, cashier's check delivered to the Receiver, or
16 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 13.

17 In the event one or more prospective purchasers qualify themselves to bid, the
18 Receiver will promptly notify the Court and the auction will be conducted at the
19 Property as noted above. Bids will be allowed in increments of \$10,000. The
20 Receiver will then file a notice advising the Court of the result of the auction
21 (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest money
22 deposits provided by bidders who are unsuccessful will be promptly returned to
23 them. If Buyer is outbid at the auction, it will receive a break-up fee of \$10,000 in
24 light of the appraisal, inspection and other expenses it has occurred as "stalking
25 horse" bidder. In the event no prospective purchasers qualify themselves to bid by
26 the Bid Qualification Deadline, the Receiver will notify the Court and seek entry of
27 an order approving the sale to Buyer. *Id.* at ¶ 14.

28

1 **A. Additional Relief**

2 Pursuant to its broad equitable powers with respect to the administration of
3 receivership assets, the Receiver requests that the Court authorize payment from the
4 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
5 on the property, subject to any objections to such liens, taxes, or claims by the
6 Receiver.

7 Finally, the Receiver requests authority to pay Broker a commission in the
8 amount of 5% of the final purchase price or 4% in the event of a successful
9 overbidder represented by Broker. Based on his extensive experience in real estate
10 transactions, the Receiver believes that such commission is commercially reasonable
11 and consistent with real estate industry standards. *Id.* at ¶ 14.

12 **VI. CONCLUSION**

13 For the reasons set forth herein, the Receiver respectfully requests entry of an
14 Order approving and authorizing: (1) sale of the Property to Buyer, and (2) payment
15 of a 5% commission to Broker from the sale proceeds or 4% commission in the
16 event of a successful overbidder represented by Broker.

17
18 Dated: August 21, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.