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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 COMMERCIAL REAL
PROPERTY (LIVE OAK
PROPERTY), AND (B) AUTHORITY
TO PAY BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: November 5, 2018
Time: 9:00 a.m.
Ctm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on November 5, 2018, 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 commercial real property (Live Oak 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: October 1, 2018

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 Entities, including the office
6 building located at 135 E. Live Oak Avenue, Arcadia, California ("Property"). The
7 Property was built in 1982, is approximately 18,516 square feet, and has two stories.
8 The Property was purchased by Apollo REIT II, LLC on March 30, 2012, for
9 \$3,880,000. Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."),
10 ¶ 3.

11 Given that holding and maintaining the Property entails significant carrying
12 costs to the receivership estate, including costs for maintenance, insurance, and
13 property taxes, and that the Receivership Entities are no longer operating or in need
14 of the Property, the Receiver listed the Property for sale through licensed brokers,
15 William DuBrowa & Associates and Sperry Van Ness ("Broker"). *Id.* at ¶ 5.

16 After consulting with Broker, the Receiver listed the Property for sale on or
17 about April 23, 2018, at \$6,900,000. This list price was based on an opinion of
18 value of the Property from 2016. It was agreed that the price would be dropped to a
19 price more consistent with 2018 values if there was no interest at that price during
20 the first 90 days. *Id.* at ¶ 6. Broker listed the Property on LoopNet, Costar, and the
21 Multiple Listing Service – three widely used internet listing services for commercial
22 property. Broker also emailed the listing to over 1,800 brokers and over 950
23 potential buyers. Broker held five open houses and gave ten private showings of the
24 Property. Despite these marketing efforts, no offers were received at or near the list
25 price. Accordingly, the Receiver, in consultation with Broker, reduced the price to
26 \$5,750,000, which is supported by comparable sales in the area in 2018. Two offers
27 in the range of the reduced list price were received shortly thereafter.

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1 The Receiver negotiated terms with both potential buyers and agreed on a
2 purchase price of \$5,650,000 with 135 E. Live Oak, LLC ("Buyer"). The Receiver
3 and Buyer then entered into a Purchase and Sale Agreement and Joint Escrow
4 Instructions ("Agreement"). Among other things, the Agreement specifies the sale
5 is subject to Court approval and is on an "AS IS" basis. The Agreement is attached
6 as Exhibit A to the Seaman Declaration filed herewith. During the due diligence
7 period, it was discovered that significant repairs were needed to air conditioning and
8 roof of the building. Accordingly, the Receiver and Buyer agreed to a \$75,000 price
9 reduction to \$5,575,000, and Buyer removed its contingencies. *Id.* at ¶7.

10 In his reasonable business judgment, the Receiver believes the Agreement,
11 obtained through the commercially reasonable and customary method of listing the
12 property with a licensed broker and after arm's length negotiations with Buyer,
13 reflects the fair market value of the Property. Moreover, the sale is subject to
14 overbid and public auction procedures discussed below. *Id.* at ¶ 8. Accordingly, the
15 Receiver respectfully requests this Court grant this Motion and approve and
16 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

17 **II. PROCEDURAL BACKGROUND**

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

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:¹

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

6 **Purchase Price.** \$5,575,000.

7 **Closing Date.** Escrow to close within 33 days of Court approval of the sale.

8 **Deposit.** Buyers have deposited \$100,000 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 **Break-Up Fee.** In the event Buyer is outbid by a qualified overbidder at the
12 auction, it will be entitled to a break-up fee of \$10,000 to compensate it for the time
13 and expenses it has incurred in conducting due diligence on the Property.

14 **Broker's Commission.** By separate agreement, the Receiver has agreed,
15 subject to Court approval, to pay Broker a commission of 5% of the final purchase
16 price if the purchaser is represented by a different broker, or 4% if the purchaser is
17 also represented by Broker. Pursuant to that agreement, Broker will compensate
18 cooperating and referring brokers, as applicable. In the proposed transaction, Buyer
19 is represented by a different broker, so the applicable commission is 5% of the final
20 purchase price.

21 **IV. ARGUMENT**

22 "The power of a district court to impose a receivership or grant other forms of
23 ancillary relief does not in the first instance depend on a statutory grant of power
24 from the securities laws. Rather, the authority derives from the inherent power of a
25 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369

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

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

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

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

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

28 **A. The Proposed Sale**

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

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

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

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

26 **B. 28 U.S.C. § 2001**

27 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
28 real property under subsection (a) and specific requirements for private sales of real

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

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

17 A public sale of realty or interest therein under any order, judgment
18 or decree of any court of the United States shall not be made without
19 notice published once a week for at least four weeks prior to the sale
20 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.

21 If such realty is situated in more than one county, state, district or
22 circuit, such notice shall be published in one or more of the counties,
23 states, or districts wherein it is situated, as the court directs. The
24 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.

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

27 The notice of sale is sufficient if it describes the property and the time, place,
28 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*

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

7 V. DISCUSSION

8 Here, the proposed sale to Buyer should be approved. The Property has been
9 fully and properly exposed to the market by Broker through the customary means of
10 listing the property on LoopNet, Costar, and the Multiple Listing Service ("MLS"),
11 advertising, holding open houses, and showing the property to prospective
12 purchasers. The Receiver believes the proposed sale represents the fair market
13 value and will generate the highest and best recovery from the Property. Seaman
14 Decl., ¶ 9.

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 Tribune:

19 In the action pending in U.S. District Court for the Central
20 District of California, Case No. 16-CV-07425-RGK-PLA,
21 Securities and Exchange Commission v. Steve Chen et al.,
22 notice is hereby given that the court-appointed receiver will
23 conduct a public auction for the commercial real property
24 located at 135 E. Live Oak Ave., Arcadia, California. Sale is
25 subject to Court confirmation after the auction is held.
26 Minimum bid price is \$5,825,000. The auction will take place
27 on November 5, 2018, at 11:00 a.m. at the property located at
28 135 E. Live Oak Ave., 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 \$100,000, and proof of funds. All bidders must be qualified
by 3:00 p.m. PT on October 26, 2018, by submitting the
required materials to the Thomas Seaman Company at 3 Park
Plaza, Suite 550, Irvine California, 92614. If interested in
qualifying as a bidder, please contact William DuBrowa at
(310) 699-1289 or bdubrowa@yahoo.com or Allen Afshar at
(310) 500-3321 or allen.afshar@svn.com.

1 *Id.* at ¶ 10.

2 In order to conduct an orderly auction and provide sufficient time for the
3 publication of notices discussed above, the Receiver will require bidders to complete
4 the above steps by October 26, 2018 ("Bid Qualification Deadline"), and conduct
5 the live public auction at the Property at 11:00 a.m. on November 5, 2018. *Id.* at
6 ¶ 11.

7 The Receiver will inform all interested persons of the opportunity to overbid
8 at the public auction, provided they qualify themselves to bid by the Bid
9 Qualification Deadline by (a) signing a non-contingent purchase and sale agreement
10 for the properties on the same terms and conditions as Buyer, but with a purchase
11 price of at least \$5,825,000, (b) providing the Receiver with an earnest money
12 deposit of \$100,000, and (c) providing proof of funds necessary to close the sale
13 transaction in the form of a current bank statement, cashier's check delivered to the
14 Receiver, or other evidence deemed sufficient by the Receiver. *Id.* at ¶ 12.

15 In the event one or more prospective purchasers qualify themselves to bid, the
16 Receiver will promptly notify the Court and the auction will be conducted at the
17 Property as noted above. Bids will be allowed in increments of \$25,000. The
18 Receiver will then file a notice advising the Court of the result of the auction
19 (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest money
20 deposits provided by bidders who are unsuccessful will be promptly returned to
21 them. In the event no prospective purchasers qualify themselves to bid by the Bid
22 Qualification Deadline, the Receiver will notify the Court and seek entry of an order
23 approving the sale to Buyer. *Id.* at ¶ 13.

24 **A. Additional Relief**

25 Pursuant to its broad equitable powers with respect to the administration of
26 receivership assets, the Receiver requests the Court authorize payment from the
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1 proceeds of the sale of the Property of the valid liens,² taxes, and any other claims
2 on the property, subject to any objections to such liens, taxes, or claims by the
3 Receiver. The Receiver notes that the Property is owned free and clear of debt. The
4 net proceeds of the sale are expected to be approximately \$5.2 million.

5 Finally, the Receiver requests authority to pay Broker a commission in the
6 amount of 5% of the final purchase price or 4% in the event of a successful
7 overbidder represented by Broker. Based on his extensive experience in real estate
8 transactions, the Receiver believes that such commission is commercially reasonable
9 and consistent with real estate industry standards. Broker has invested substantial
10 time into preparing the Property for sale, locating potential purchasers, marketing
11 the property to them, negotiating terms, and preparing sale documents. *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 commission of 5% of the purchase price to Broker from the sale proceeds.

16
17 Dated: October 1, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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19 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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