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15 Attorneys for Defendant
SANJEEV ACHARYA

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 SECURITIES AND EXCHANGE
21 COMMISSION,

22 Plaintiff,

23 v.

24 SILICONSAGE BUILDERS, LLC aka
SILICON SAGE BUILDERS and SANJEEV
ACHARYA,

25 Defendants.
26

Case No. 3:20-CV-09247-SI

**DEFENDANT SANJEEV ACHARYA’S
STATEMENT OF NON-OPPOSITION TO
REPORT OF RECEIVER**

1 On May 3, 2021, David Stapleton, the Court-appointed receiver (the “Receiver”) filed a Notice
2 of Errata to First Quarterly Report and Recovery Plan and Notice of Hearing on Request for Approval
3 of First Quarterly Report and Recovery Plan (“the Report”). Dkt. 120. In the Report, the Receiver
4 updates the Court on various projects and requests that the Court (1) approve the Report; (2) authorize
5 the Receiver to waive the attorney-client privilege of the Receivership Entities as to materials
6 requested by the U.S. Attorney’s Office ; and (3) require Chase Bank, N.A. to provide electronic access
7 to all accounts held by the Receivership Entities. *Id.* Defendant Sanjeev Acharya hereby submits this
8 Statement of Non-Opposition to the Report. Mr. Acharya requests that the Court make clear in any
9 order regarding the Report that the Receiver shall *not* produce attorney-client communications
10 involving Mr. Acharya in his personal capacity.

11 **I. The Receiver’s Recovery Plan**

12 In the Report, the Receiver explains that he has “identified thirteen (13) properties in the
13 receivership estate and the Receiver and his team are evaluating each property separately.” Dkt. 120
14 at 6. Mr. Acharya fully supports the Receiver’s ongoing efforts to obtain the best available returns for
15 Silicon Sage investors¹ and has made himself available to assist the Receiver throughout these
16 proceedings. Mr. Acharya is committed to taking whatever steps are necessary to maximize investor
17 returns and to making amends for any actions he took that caused harm to investors.

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21 ¹ Among other things, Mr. Acharya supports the Receiver’s approach to the Almaden and Osgood
22 projects, including his decisions to work with Acres Capital to complete construction and to retain
23 the existing sales team. Mr. Acharya respectfully submits that the Receiver might be able to control
24 costs effectively on this and other projects by working with the former construction employees of the
25 Receivership Entities, rather than with outside parties. This might result in a better return for
26 investors.

25 As to the undeveloped projects discussed in the Report, Mr. Acharya respectfully notes that if these
26 assets are sold at an early stage, any meaningful recovery for individual investors is unlikely. To
27 create value for investors, rather than selling these projects in undeveloped form, Mr. Acharya
28 encourages the Receiver to consider a longer term strategy. Specifically, the Receiver might
consider entering into agreements with joint venture partners who could provide new capital to
develop the projects and allow investors (depending on their preference) to either receive immediate
liquidity or follow the developments to completion (at which point meaningful recovery would be
possible).

1 **II. Mr. Acharya's Personal Attorney-Client Privilege**

2 In the Report, the Receiver asks the Court to authorize it to waive the attorney-client privilege
3 held by the Receivership Entities in response to a request from the United States Attorney's Office.
4 *Id.* at 14. The Receiver is in possession of Mr. Acharya's Silicon Sage company email account, which
5 includes many emails exchanged between Mr. Acharya and his personal attorneys for the purpose of
6 seeking and receiving personal legal advice. Mr. Acharya recognizes the Receiver's ability to waive
7 the privilege as to the Receivership Entities, but he has not waived and does not intend to waive his
8 personal attorney-client privilege. Contrary to the Receiver's suggestion, Mr. Acharya's bifurcated
9 settlement with the SEC does not operate as a privilege waiver.

10 Mr. Acharya and the Receiver have met and conferred and are engaged in a continuing dialogue
11 regarding this issue. Counsel for the Receiver has represented that the Receiver does not intend to do
12 anything that would waive Mr. Acharya's personal attorney-client privilege. Mr. Acharya has
13 provided to the Receiver a list of attorneys who have provided him with legal advice in his personal
14 capacity and has requested that the Receiver filter out communications from those attorneys for
15 potential further review before production to any third party. Going forward, Mr. Acharya expects to
16 work collaboratively with the Receiver and the U.S. Attorney's Office to preserve the privilege.

17 Mr. Acharya requests that any order issued by the Court regarding the Report make clear that
18 the Receiver is not authorized to produce Mr. Acharya's personal privileged communications.

19 **III. Breach of Fiduciary Duty**

20 In the Report, the Receiver makes reference to a potential fiduciary duty claim against Mr.
21 Acharya and the possibility of retaining a law firm to pursue additional claims against him. Dkt. 120
22 at 3. Since reviewing the Report, Mr. Acharya has met and conferred with the Receiver in an effort
23 to better understand this potential claim and to chart a path to a potential resolution, as appropriate.

24 To be clear, Mr. Acharya lacks funds or assets to satisfy any such potential claims, and
25 protracted adversarial proceedings would be counterproductive. Mr. Acharya is in Chapter 7
26 bankruptcy proceedings, which will result in the liquidation of his remaining few assets that are not
27 protected by legal exemptions. Mr. Acharya is in the process of voluntarily providing the SEC and
28 the Receiver with a full forensic accounting of his personal transactions with the Silicon Sage

1 companies in the last five years. The significant asset that Mr. Acharya acquired during this period—
2 his family home—will soon be sold as part of the bankruptcy estate. His priority now is to identify a
3 suitable location for his three sons, one 7- and two 3-year-olds, to live.

4 Adding another lawsuit to the litany of legal actions Mr. Acharya is facing will only serve to
5 increase legal fees and the complexity of reaching a resolution, with no hope of a meaningful recovery.
6 Accordingly, Mr. Acharya requests that the Court carefully weigh the costs and benefits of further
7 legal actions before authorizing counsel to pursue even more claims.

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9 Dated: May 17, 2021

COOLEY LLP

10
11 /s/ John Hemann

12 John Hemann

13 Attorneys for Defendant
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