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Counsel for David Stapleton, Receiver

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER:

(1) APPROVING SALE OF REAL PROPERTY OWNED BY 528 MATHILDA, LLC, FREE AND CLEAR OF LIENS;

(2) APPROVING A FORBEARANCE AGREEMENT AND AGREEMENTS TO RELEASE LIENS AND TO VALIDATE LIENS AGAINST PROPERTY OWNED BY PERALTA AT FREMONT, LLC, AND LITTLE PORTUGAL GATEWAY, LLC; AND

(3) REQUIRING THE CURRENT TENANTS TO VACATE THE PROPERTY

Date: October 1, 2021
Time: 10:00 a.m.
Crtrm.: 1 – 17th Floor (hearing via Zoom)
Judge: Susan Illston

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I. INTRODUCTION

In accordance with Local Rule 66-2 and paragraphs 7 and 35 of the *Order on Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver* [Docket No. 63] (the "Receivership Order"), and the law governing federal equity receiverships, David Stapleton, the Court-appointed receiver (the "Receiver") over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together, the "Receivership Entities"), respectfully requests that the Court enter an order in aid of the receivership that authorizes the Receiver to sell the real property owned by 528 Mathilda, LLC, free and clear of liens. In connection with the sale of this real property, the Receiver also seeks approval of agreements with (1) the holder of the first trust deed regarding its interest rate and agreement to forbear, (2) the holder of the second trust deed, which is cross-collateralized with real property owned by Little Portugal Gateway, LLC, to release its lien against this property and agree not to take anything on account of that lien from the sale of this real property, in exchange for which the Receiver will agree to acknowledge the validity of its lien against the real property owned by Little Portugal Gateway, LLC, and (3) the holder of the third trust deed, which is cross-collateralized with real property owned by Peralta at Fremont, LLC, to release its lien against this real property and agree to not take anything from this sale on account of that lien, in exchange for which the Receiver will agree to acknowledge the validity of its lien against the real property owned by Peralta at Fremont. In addition, the Receiver seeks an order requiring the current tenants to vacate the property. As a result of the sale and the agreements with the lenders, the Receiver expects to net approximately $88,000 after the payment of property taxes, liens, costs of sale, and broker's commissions.

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II. BACKGROUND FACTS

A. Procedural Background

In late December 2020, the Securities and Exchange Commission (the "SEC") commenced this litigation against defendants SiliconSage Builders, LLC, and Sanjeev Acharya (together, the "Defendants") alleging violations of federal securities laws. On February 10, 2021, the Court issued a preliminary injunction and entered the Receivership Order. The Receivership Order stays all efforts by creditors to take efforts to collect their debts. Section VIII of the Receivership Order authorized the Receiver to retain brokers and to take the necessary steps to sale or lease the real property owned by the Receivership Entities. In June 2021, the Court entered an order excusing the Receiver's compliance with 28 U.S.C. § 2001 in connection with the sale of real property so that the Receiver only needs to present the proposed sale to the Court and not obtain three appraisals or run a formal auction process.

B. The Receiver Has Accepted an Offer to Purchase the Real Property Owned by 528 Mathilda

528 Mathilda is one of the Receivership Entities. Its owns a lot zoned for commercial and residential use at 510-528 S. Mathilda Avenue, Sunnyvale, CA (APNs 209-29-060 and 209-29-061) (the "Property"). There is a commercial building and a number of residences located on the Property. There are three commercial tenants and six residential tenants. The commercial tenants have no written leases although they pay a modest amount of rent and were served with 30-day notices to vacate on July 8, 2021. The residential tenants, who are believed to be former SiliconSage employees or family members of Mr. Acharya, have written month to month leases with SiliconSage under which they pay no rent. Copies of the leases are attached as Exhibit "1." Five of the six were served with notices to vacate by certified mail on April 29, 2021, with the sixth served on July 8, 2021. Copies of the notices to vacate are attached as Exhibit "2."

After a number of months of marketing the Property, the Receiver has accepted an offer to purchase the Property from Shawn Taheri (the "Buyer") for $6,450,000. The

Buyer has completed due diligence and escrow is holding a deposit of $150,000 The sale is "as is, where is" and without any representations or warranties and free and clear of all liens. Pursuant to an amendment, the closing is to occur by October 31, 2021, unless extended by the parties. The purchase agreement requires that the Receiver obtain an order requiring the tenants to vacate within thirty days of entry of the approval order, assuming that they have not already complied with the notices to vacate. A copy of the purchase agreement and amendment is attached as Exhibit "3" (the "Purchase Agreement").

In order to accomplish this sale, the Receiver retained David Wientjes of Kidder Mathews (the "Broker"). Pursuant to the listing agreement that is attached as Exhibit "4," the Broker is entitled to a sales commission of 2.5%, or $161,250.00. In the attached declaration of David Wientjes, he details the marketing efforts that resulted in the proposed sale and why he believes that the proposed sale is the highest and best offer that will be received.

C. <u>In Order to Facilitate the Sale, the Receiver Has Reached Agreements with the Holders of the Trust Deeds Against the Property</u>

As set forth in the preliminary title report that is attached as Exhibit "5," there are a number of liens against the Property. Bolour Associates, Inc. ("Bolour") is the holder of the first priority deed of trust (the "Bolour Deed of Trust"). As of the date that the Receiver was appointed, Bolour was owed $5,395,919.35 on the note secured by the Bolour Deed of Trust and the debt was accruing interest at the default rate of 21.25%. SiliconSage Builders, LLC, and Sanjeev Acharya are guarantors of this obligation. The second priority lien is held by an entity affiliated with Bolour, Alum Rock Holding Company, LLC (the "Alum Rock Lender"), and secures a note in the original principal amount of $1.8 million that was signed by Little Portugal Gateway, LLC, and guaranteed by 528 Mathilda, LLC (the "Alum Rock Deed of Trust"). The note is also secured by a deed of trust against the real property owned by Little Portugal Gateway, LLC. A copy of the deed of trust is attached as Exhibit "6." The third priority lien is held by Max Benjamin

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Partners, Inc., and secures a note in the original principal amount of $300,000 (the "Max Benjamin Deed of Trust"). The note was also signed by Peralta at Fremont, LLC, and is secured by property owned by that entity. A copy of the Max Benjamin Deed of Trust is attached as Exhibit "7."

The cumulative total of these liens exceeds the purchase price. Accordingly, the Receiver negotiated with Bolour regarding the interest rate on the debt secured by the Bolour Deed of Trust and, because the second and third priority liens have other collateral, the Receiver obtained the agreement of these lienholders to release their liens pursuant to lien release agreements described below. With these concessions, the Property is expected to generate approximately $81,405 for the receivership estate, as set forth below.

1. The Agreement with Bolour Regarding the Bolour Lien

As set forth above, as of the date that the Receiver was appointed, Bolour was owed $5,395,919.35 and the debt was accruing interest at the default rate of 21.25%. As of July 31, 2021, this amount had increased to $5,942,375.82 The Receiver has reached an agreement with Bolour regarding this obligation, subject to the approval of the Court. Bolour has conditionally agreed to reduce the post-receivership interest to the following rates:

- From February 10, 2021, through July 30, 2021, interest accrues at 10% per annum
- From July 31, 2021, through September 14, 2021, interest accrues at 13% per annum
- From September 15, 2021, through October 31, 2021, interest accrues at 15% per annum

A condition to the adjustment of the rates is that Bolour receives payment on or before October 31, 2021. If the sale does not close by this deadline, or such later date as Bolour may agree to, then interest will revert to the contract rate and Bolour will have relief from the Receivership Order to exercise its state law remedies. If this sale closes,

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Bolour has agreed to waive any unsecured claim against SiliconSage Builders or 528 Mathilda on account of the note secured by the Bolour Deed of Trust, although it has preserved any remedies against Mr. Acharya. A copy of the forbearance agreement, which is believed to be in close to final form but remains subject to revision, is attached as Exhibit "8" (the "Bolour Forbearance Agreement"). The Receiver will file the executed agreement with the Court once it is signed.

2. The Agreement with the Alum Rock Lender

The Alum Rock Deed of Trust secures a note that is cross-collateralized by real property owned by Little Portugal Gateway where the lender holds a first priority deed of trust. Because it is expected to be fully secured by the Little Portugal Gateway property, at the closing of the proposed sale, the Alum Rock Lender has agreed to reconvey its lien against the Property so that the Property may be sold free and clear of the Alum Rock Deed of Trust. In exchange, the Receiver has agreed to acknowledge the debt and note secured by the property owned by Little Portugal Gateway and to not challenge the validity or priority of that lien, although there are ongoing discussions regarding the interest rate on that obligation and the length of time that the lender is willing to forbear which are expected to be the subject of an agreement presented to the Court in the future. The parties are in the process of documenting this agreement (the "Alum Rock Lender Agreement") and will submit the agreement to the Court as soon as it is completed.

3. The Agreement with Max Benjamin Partners

The Max Benjamin Deed of Trust secures an obligation that is cross-collateralized with real property owned by Peralta at Fremont, LLC. Because of the priority of its lien against the Property and the default on the senior debt, Max Benjamin Partners cannot expect to receive anything on account of this lien because there is not sufficient equity to which this lien attaches. If the Receiver does not administer the Property, then Bolour will likely foreclose and that will eliminate the Max Benjamin Lien. Under the circumstances and in exchange for acknowledging the lien against the real property

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owned by Peralta at Fremont and agreeing not to seek to avoid or remove it, the Receiver has obtained the agreement of Max Benjamin Partners that it will not receive any of the proceeds from the sale of the Property and will release its lien against the Property so that it can be conveyed free and clear of the Max Benjamin Deed of Trust. A copy of the Agreement Regarding Liens is attached as Exhibit "9" (the "Max Benjamin Agreement").

D. If the Agreements Are Approved, There Is Value to Administering the Property

If the Court approves the Receiver's agreements with the lenders, then there is value to his administration of the Property, as follows:

Purchase Price:	$6,450,000
Less 2.5% Broker's Commission	<161,250>
Less Estimated Costs of Sale of 1%	<64,500>
Less total property taxes	<$232,723>
Less Amount Due to Bolour	<$5,902,531.50>
Net remaining after payment of the foregoing	$88,995.50

III. LEGAL AUTHORITY

A. The Court Has Authority to Approve the Sale of the Property, Which the Receiver Believes Is in the Best Interests of the Receivership Estate

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration

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of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

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

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

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

With respect to authorizing the sale of property, 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 property." *See also SEC v. American Capital Invest., Inc.,* 98 F.3d 1133, 1144 (9th Cir. 1996), *cert. denied* 520 U.S. 1195 (decision abrogated on other grounds) (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity orders property in its custody to be sold, the court itself as vendor confirms the title in the purchaser." (2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 487).

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

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

B. <u>The Agreements with the Lenders Should Be Approved</u>

Because the Receiver cannot sell the Property unless the three agreements with the lenders are approved, this is the first issue addressed. The Receiver believes that the agreements are in the best interests of 528 Mathilda and the receivership estate as a whole, and result in no prejudice to either Peralta at Fremont or Little Portugal Gateway.

The agreement with Bolour represents several months of ongoing negotiations because Bolour or affiliated entities hold liens on five different properties. At the time of the receivership, Bolour had filed a notice of default and the debt was accruing interest at the default rate of 21.25%. Because of concerns about the value of its collateral and whether it would remain adequately protected by an equity cushion, Bolour made it clear that it was not going to wait indefinitely for the Receiver to sell the Property. The Receiver believes that the forbearance agreement strikes an appropriate balance. The offer that is the subject of the Motion is the highest and best received. If the sale does

not close, there is not a sufficient equity cushion to justify the Receiver taking the Property back to market and trying to sell it. With respect to the interest rates, they reflect a reduction from the default rate of interest that was being charged post-receivership and have been the subject of heavy negotiation. For these reasons, the Receiver believes that the forbearance agreement with Bolour is in the best interests of all involved.

With respect to the agreements with the Alum Rock Lender and Max Benjamin Partners, the Receiver also believes these are in the best interests of the receivership estate as a whole. The Receiver has analyzed the liens that these lenders hold on the other properties and determined that there is no basis to seek to avoid them and that they were validly perfected. Because of this, recognizing that validity via an agreement does not give anything up. There are ongoing discussions with both lenders about the rate of interest to be charged on their loans, and the parties each preserve all of their rights and defenses on that issue. Because the agreements don't result in the relinquishment of any claims by the estate but do enable the Receiver to sell the Property, the Receiver believes they are in the best interests of the estate and should be approved.

C. The Sale Is in the Best Interests of the Receivership Estate

The proposed sale of the Property is in the best interests of the receivership estate. The Broker marketed the Property for several months and made significant efforts, resulting in five offers. After negotiations, the Receiver accepted the Buyer's offer to purchase the Property because it was the highest and best offer, and then negotiated with the lienholders to realize some value for the receivership estate. The alternative is abandonment, which would have resulted in no benefit.

D. Payment of the Bolour Deed of Trust, Taxes, Costs of Sale and the Broker's Commission Should Be Approved

Pursuant to its broad equitable powers with respect to the administration of receivership assets, the Receiver requests that the Court authorize payment from the Property's sale proceeds of the Broker's commission, the costs of sale, the Bolour Deed

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of Trust, and all outstanding property taxes. The sale is subject to the encumbrances of record.

E. The Receiver Requests that the Order Require Any Remaining Tenants to Vacate the Property

Pre-receivership, 528 Mathilda entered into leases with parties who the Receiver is informed were employees or family members of Mr. Acharya permitting them to reside in the residential units on a month to month basis with no rent due. The Receiver terminated these leases and served notices to vacate in April and July 2021. The Receiver is informed that some have vacated and others have not. Because this was anticipated, the Purchase Agreement requires that the Receiver seek an order requiring any remaining tenants to vacate no later than thirty days from entry of the order approving this sale and that gives the buyer the ability to enforce that provision of the order.

To the extent that receivership law looks to the Bankruptcy Code for guidance, section 542 of the Bankruptcy Code requires that any entity or person "in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, shall deliver to the trustee . . . such property . . . ." 11 U.S.C. § 542(a). Pursuant to this provision and general equitable principles, the Receiver requests entry of an order directing the tenants to vacate the Property within thirty days of entry of the order, and giving the Buyer the authority to enforce that provision of the order if they refuse to comply.

IV. CONCLUSION

Based on the foregoing, the Receiver requests that the Court enter an order:

(1) Granting the Motion;

(2) Authorizing the Receiver is authorized to enter into the Purchase Agreement and approving the provisions of the Purchase Agreement;

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(3) Authorizing the Receiver to enter into the Bolour Forbearance Agreement with B.A. Lending, LLC, and approving its terms;

(4) Providing that if the sale to the Buyer does not close by October 31, 2021, then Bolour will be deemed to have been granted relief from the *Order on Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver* effective as of November 1, 2021, to exercise its state law remedies against the Property;

(5) Authorizing the Receiver to enter into the Alum Rock Lender Agreement, approving the terms of that agreement, and confirming the validity of the lien of Alum Rock Holding Company, LLC, against the real property owned by Little Portugal Gateway, LLC;

(6) Authorizing the Receiver to enter into the Max Benjamin Agreement, approving the terms of that agreement, and confirming the validity of the lien of Max Benjamin Partners, LLC, against the real property owned by Peralta at Fremont, LLC, as set forth in the agreement;

(7) Authorizing the Receiver to sell the Property to the Buyer for $6,450,000 pursuant to the terms and conditions of the Purchase Agreement, with the sale "as-is, where-is" basis, without representations or warranties of any kind;

(8) Providing that the sale of the Property to the Buyer is free and clear of all liens, claims and interests, including liens, claims, and interests not of record, including without limitation the following:

(a) The lien of B.A. Lending, LLC, recorded on August 27, 2019 as Document No. 24265224;

(b) The lien of 34th Alum Rock Holding Company, LLC, recorded on September 13, 2019, as Document No. 24290730; and

(c) The lien of Max Benjamin Partners, Inc. recorded on December 23, 2020, as Document No. 14760811.

(9) Authorizing the Receiver to pay the following from escrow:

(a) The costs of sale, including the Broker's commission;

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(b) Property taxes, including delinquent taxes, penalties, late fees, and any assessments collected with current taxes; and

(c) The obligation owing to B.A. Lending, LLC, recorded on August 27, 2019 as Document No. 24265224;

(10) Providing that any licensed title insurer and the Buyer are authorized to rely on this Order as authorizing the Receiver to transfer legal title to the Property free and clear of all liens;

(11) Requiring that any remaining tenants shall vacate the Property no later than thirty (30) days after entry of the Order, which shall be mailed to them and posted on the front door of each residence promptly up on entry;

(12) Providing that if any tenant fails to timely vacate the Property, then the Buyer shall have full authority to enforce this Order with the assistance of local law enforcement or through a writ of execution to be issued by this Court; and

(13) Authorizing the Receiver to take any and all actions reasonably necessary to consummate the sale of the Property.

DATED: August 27, 2021

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

By: /s/ Kyra E. Andrassy
KYRA E. ANDRASSY
Counsel for David Stapleton, Receiver

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DECLARATION OF DAVID WIENTJES

I, David Wientjes, declare as follows:

1. I am a senior vice president with Kidder Mathews and have over 35 years of real estate advisory experience in the San Francisco Bay Area. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the motion of David Stapleton (the "Receiver") to sell real property owned by 528 Mathilda LLC (the "Motion"). Unless otherwise defined in this declaration, all terms defined in the Motion are incorporated herein by this reference.

2. The Receiver retained Kidder Mathews in April 2021 to market and list the real property owned by 528 Mathilda, LLC, and we staffed it with a team of three people: myself; Brett Reynolds who is a member of the Appraisal Institute (MAI) and a Certified Commercial Investment manager IAIC Appraiser with over 17 years of experience (although he did not provide formal appraisal services on this project); and Clayton Jew, who has over 30 years of experience with commercial real estate. We prepared a customized marketing brochure specific to the Property and an in-depth underwriting analysis that was summarized in the Offering Memorandum Brochure for this Property. The Property was listed for $5.2 million, which reflected the impact of current market volatility and the unentitled status of the site.

3. To market the Property, we used multiple online property and investment platforms, including Costar, Loopnet, and LinkedIn, to targeted clientele. The Offering Memorandum was delivered to Kidder Mathews' proprietary database of prospective domestic and national investors, developers, and Bay Area investment sale brokers. The database distribution list for this Property contained in excess of 800 active investors and buyers and over 250 Bay Area brokers. Investors were contacted on a weekly basis with follow up calls with interested parties. Electronic flyers with the Property information and links to the Offering Memorandum were sent to principals and Bay Area investment sale brokers on a weekly basis.

4. We set a bid deadline and received multiple offers at or above the listing price of $5.2 million. We then went to a best and final round that resulted in the offer that is the subject of the Motion, which is more than $1.2 million in excess of the listing price.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17 day of August, 2021, at San Francisco, California.

David Wientjes

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DECLARATION OF DAVID STAPLETON

I, David Stapleton, declare as follows:

1. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of my motion (the "Motion") for authorization to sell real property owned by 528 Mathilda, LLC, free and clear of liens. Unless otherwise defined in this declaration, all terms defined in the Motion are incorporated herein by this reference.

2. I was appointed as the receiver over SiliconSage Builders, LLC, and its affiliates and subsidiaries by order entered on February 10, 2021. In June 2021, the Court entered an order excusing compliance with 28 U.S.C. § 2001 in connection with the sale of real property.

3. 528 Mathilda is one of the Receivership Entities. Its owns a lot zoned for commercial and residential use at 510-528 S. Mathilda Avenue, Sunnyvale, CA (APNs 209-29-060 and 209-29-061) (the "Property"). There is a commercial building and a number of residences located on the Property. There are three commercial tenants and six residential tenants. The commercial tenants have no written leases although they pay a modest amount of rent and were served with 30-day notices to vacate on July 8, 2021. The residential tenants, who are believed to be former SiliconSage employees or family members of Mr. Acharya, have written month to month leases with SiliconSage under which they pay no rent. Five of the six were served with notices to vacate by certified mail on April 29, 2021, with the sixth served on July 8, 2021. True and correct copies of the notices to vacate are attached as Exhibit "2."

4. After a number of months of marketing the Property, I accepted an offer to purchase the Property from the Buyer for $6,450,000. The Buyer has completed due diligence and escrow is holding a deposit of $150,000 The sale is "as is, where is" and without any representations or warranties and free and clear of all liens. Pursuant to an amendment, the closing is to occur by October 31, 2021, unless extended by the parties.

The purchase agreement requires that I obtain an order requiring the tenants to vacate within thirty days of entry of the approval order, assuming that they have not already complied with the notices to vacate. A true and correct copy of the purchase agreement and amendment is attached as Exhibit "3" (the "Purchase Agreement").

5. In order to accomplish this sale, I retained David Wientjes of Kidder Mathews as the broker. A true and correct copy of the listing agreement is attached as Exhibit "4," the Broker is entitled to a sales commission of 2.5%, or $161,250.00.

6. A true and correct copy of the preliminary title report is attached as Exhibit "5.." Attached as Exhibit "6" is a true and correct copy of the deed of trust in favor of Alum Rock Holding Company, LLC, which secures a note in the original principal amount of $1.8 million that was signed by Little Portugal Gateway, LLC, another of the Receivership Entities. Attached as Exhibit "7" is a true and correct copy of a deed of trust in favor of Max Benjamin Partners, Inc., that secures a note in the original principal amount of $300,000. The cumulative total of these liens exceeds the purchase price. Accordingly, we negotiated with Bolour regarding the interest rate on the debt secured by the Bolour Deed of Trust and, because the second and third priority liens have other collateral, obtained the agreement of these lienholders to release their liens pursuant to lien release agreements described below. With these concessions, the Property is expected to generate approximately $88,000 for the receivership estate, as set forth below.

7. As of the date that I was appointed, I am informed that Bolour was owed $5,395,919.35 and the debt was accruing interest at the default rate of 21.25%. I have reached an agreement with Bolour regarding this obligation, subject to the approval of the Court, in which it has agreed to reduce the post-receivership rates if this sale closes by October 31, 2021. A true and correct copy of what I expect is the final version of the forbearance agreement is attached as Exhibit "8." It is in the process of being executed. The agreement with Bolour represents several months of ongoing negotiations because Bolour or affiliated entities hold liens on five different properties. Because of concerns

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about the value of its collateral and whether it would remain adequately protected by an equity cushion, Bolour made it clear that it was not going to wait indefinitely for the Receiver to sell the Property. I believe that the forbearance agreement strikes an appropriate balance. The offer that is the subject of the Motion is the highest and best received. If the sale does not close, there is not a sufficient equity cushion to justify my taking the Property back to market and trying to sell it. With respect to the interest rates, they reflect a reduction from the default rate of interest that was being charged post-receivership and have been the subject of heavy negotiation. For these reasons, I believe that the forbearance agreement with Bolour is in the best interests of all involved.

8. The Alum Rock Deed of Trust secures a note that is cross-collateralized by real property owned by Little Portugal Gateway where the lender holds a first priority deed of trust. Because it is expected to be fully secured by the Little Portugal Gateway property, at the closing of the proposed sale, the Alum Rock Lender has agreed through counsel that it will reconvey its lien against the Property so that the Property may be sold free and clear of the Alum Rock Deed of Trust. In exchange, I have agreed to acknowledge the debt and note secured by the property owned by Little Portugal Gateway and to not challenge the validity or priority of that lien, although there are ongoing discussions regarding the interest rate on that obligation and the length of time that the lender is willing to forbear which are expected to be the subject of an agreement presented to the Court in the future. We are still in the process of documenting that agreement and will present it to the Court as soon as possible.

9. The Max Benjamin Deed of Trust secures an obligation that is cross-collateralized with real property owned by Peralta at Fremont, LLC. Because of the priority of its lien against the Property and the default on the senior debt, Max Benjamin Partners cannot expect to receive anything on account of this lien because there is not sufficient equity to which this lien attaches. If I do not administer the Property, then Bolour will likely foreclose and that will eliminate the Max Benjamin Lien. Under the circumstances and in exchange for acknowledging the lien against the real property

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owned by Peralta at Fremont and agreeing not to seek to avoid or remove it, I have obtained the agreement of Max Benjamin Partners that it will not receive any of the proceeds from the sale of the Property and will release its lien against the Property so that it can be conveyed free and clear of the Max Benjamin Deed of Trust. A true and correct copy of the Agreement Regarding Liens is attached as Exhibit "9" (the "Max Benjamin Agreement").

10. I have caused the liens that these lenders hold on the other properties to be analyzed and we have determined that there is no basis to seek to avoid them and that they were validly perfected. Because of this, recognizing that validity via an agreement does not give anything up. There are ongoing discussions with both lenders about the rate of interest to be charged on their loans, and the parties each preserve all of their rights and defenses on that issue. Because the agreements don't result in the relinquishment of any claims by the estate but do enable me to sell the Property, I believe they are in the best interests of the estate and should be approved.

11. If the Court approves the agreements with the lenders, then I believe there is value to the administration of the Property, which I estimate as follows:

Purchase Price:	$6,450,000
Less 2.5% Broker's Commission	<161,250>
Less Estimated Costs of Sale of 1%	<64,500>
Less total property taxes	<$232,723>
Less Amount Due to Bolour	<$5,902,531.50>
Net remaining after payment of the foregoing	$88,995.50

I declare under penalty of perjury under the laws of the United States of America

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that the foregoing is true and correct.

Executed on this 27 day of August, 2021, at Solana Beach, California.

David Stapleton

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