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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
COMMISSION,
12
Plaintiff,
13
v.
14 SILICONSAGE BUILDERS, LLC aka
15 SILICON SAGE BUILDERS and
SANJEEV ACHARYA,
16
Defendants.

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

**STIPULATION AND ORDER MODIFYING
ORDER ON PLAINTIFF SECURITIES
AND EXCHANGE COMMISSION'S
MOTION FOR APPOINTMENT OF
RECEIVER TO PERMIT CERTAIN
CLAIMS AND ACTIONS TO PROCEED
TO SEEK RECOVERIES FROM
PROCEEDS OF INSURANCE POLICIES
OF THE RECEIVERSHIP ENTITIES**

Hon. Susan Illston

18 **TO THE HONORABLE SUSAN ILLSTON, UNITED STATES DISTRICT JUDGE:**

19 This stipulation ("Stipulation") is entered into between David Stapleton, solely in
20 his capacity as the Receiver for SiliconSage Builders, LLC, and its subsidiaries and
21 affiliates (the "Receiver"), the Securities & Exchange Commission ("SEC"), Sanjeev
22 Acharya, and the undersigned counsel for certain pre-litigation and litigation claimants
23 (the "Claimants"), pursuant to the following recitals:

24 **RECITALS**

25 1. On February 10, 2021, the Court entered the *Order on Plaintiff Securities*
26 *and Exchange Commission's Motion for Appointment of Receiver* (the "Receivership
27 Order") under which it appointed David Stapleton as the receiver (the "Receiver") over
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1 SiliconSage Builders, LLC, and its subsidiaries and affiliates (the "Receivership Entities").
2 [See Docket No. 63].

3 2. Among other things, the Receivership Order stays "[a]ll civil legal
4 proceedings of any nature, including, but not limited to, bankruptcy proceedings,
5 foreclosure actions, default proceedings, or other actions of any nature involving: (a) the
6 Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located;
7 [and] (c) any of the Receivership Entities, including subsidiaries and partnerships"
8 This stay of the pursuit of claims continues pending further Court order.

9 3. As of February 10, 2021, there were some legal proceedings and some pre-
10 lawsuit demands against various of the Receivership Entities for which the Receivership
11 Entities had insurance policies under which the insurer was providing a defense to the
12 lawsuits or demands and where insurance proceeds may provide a source of recovery.
13 Specifically, the following civil actions or pre-litigation actions were pending and have
14 been stayed under the Receivership Order (together, the "Pending Cases"):

15 a. Downtown Gateway Homeowners Association v. 1313 Franklin, LLC;
16 SiliconSage Builders, LLC, et al. This is a pre-litigation construction defect matter at a
17 mixed-used condominium project comprised of 44 residential units and 7 commercial
18 spaces located in Santa Clara, California, for which United Specialty Insurance Company
19 is providing a defense and where insurance proceeds may be a source of recovery for
20 the claimants;

21 b. Crown Court/Park Place HOA v. SiliconSage Builders, LLC, et al.
22 This is a pre-litigation construction defect matter at a 27-unit condominium development
23 located at 37009 Fremont Blvd., in Fremont, California, for which United Specialty
24 Insurance Company is providing a defense and where insurance proceeds may be a
25 source of recovery for the claimants; and

26 c. Madison Place HOA v. SiliconSage Builders, LLC, et al. This is a
27 pre-litigation construction defect matter at a mixed-used condominium project comprised
28 of 28 residential units and 6,470 square feet of commercial space located in Santa Clara,

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1 California, for which United Specialty Insurance Company is providing a defense and
2 may be a source of recovery.

3 d. Alexis Homeowners Association v. 2585 El Camino Real, LLC, et al.
4 This is a pre-litigation construction defect matter involving a 60-unit condominium project
5 located at 2585 El Camino Real, in Santa Clara, California, for which United Specialty
6 Insurance Company has been providing a defense and for which it has been a source of
7 recovery pursuant to a settlement reached prior to entry of the Receivership Order. A
8 recovery action against one of the product manufacturers, Contego, is being
9 contemplated. Should it proceed, any recovery made would reimburse United Specialty
10 Insurance Company. The Receiver does not believe that the recovery action would
11 violate the Receivership Order, but it is included in this Stipulation in an abundance of
12 caution.

13 4. The insurance policies at issue are exclusively for property damage and
14 bodily injury. Said policies are identified as follows:

15 a. *Downtown Gateway Homeowners Association v. 1313 Franklin, LLC;*
16 *SiliconSage Builders, LLC, et al.:*

17 United Specialty Insurance Company
18 Policy No. BTO1518034
19 Policy Period: 11/05/2015 to 11/05/2018

20 b. *Crown Court/Park Place HOA v. SiliconSage Builders LLC, et al.*

21 United Specialty Insurance Company
22 Policy Nos.: BTO1416939 (primary); BUO1412858 (excess)
23 Policy Periods: 06/18/2014 to 06/18/2017 (primary); 06/18/2014 to
24 06/18/2017 (excess)

25 c. *Madison Place HOA v. SiliconSage Builders, LLC, et al.*

26 United Specialty Insurance Company
27 Policy No. BTO1416939 (primary); BUO1412858 (excess)
28 Policy Period: 06/18/2014 to 06/18/2017 (primary); 06/18/2014 to
06/18/2017 (excess)

d. *Alexis Homeowners Association v. 2585 El Camino Real, LLC, et al.*

United Specialty Insurance Company
Policy Nos. BTO1416789 (primary); BUO1412767 (excess)

1 Policy Periods: 04/17/2014 to 12/16/2017 (primary); 04/17/2014 to
2 12/16/2017 (excess)

3 5. The Receiver believes that it is in the best interests of all parties that the
4 Pending Cases be permitted to proceed as against applicable insurance policies of the
5 Receivership Entities only and provided that the Claimants waive any right to assert a
6 claim against the receivership estate if they elect to proceed against insurance. By
7 permitting the Pending Cases to proceed in this manner, the receivership estate will
8 reduce potential claims against the receivership estate and will not incur any fees
9 defending the Pending Cases.

10 **STIPULATION**

11 Based on the foregoing recitals which are incorporated herein by reference as if
12 set forth fully herein, and subject to the approval of this Court, the Receiver, the SEC, Mr.
13 Acharya, and the Claimants agree as follows:

14 A. Upon entry of an order approving this Stipulation, the Receivership Order
15 shall be deemed modified to permit the Pending Cases to proceed against the
16 Receivership Entities, whether informally or through formal civil legal proceedings, and
17 the Claimants bringing the Pending Cases are permitted to enforce any judgment or
18 settlement only by collecting from any available insurance in accordance with applicable
19 state or federal law.

20 B. By electing to proceed as against applicable insurance, the Claimants in the
21 Pending Cases agree that they will look solely to the insurance proceeds and have
22 waived the right to assert a claim against the receivership estate for the claims that are
23 the subject of the Pending Cases and for which they have standing to assert.
24 Furthermore, Claimants are not waiving the right to assert any claims against the
25 receivership estate that are not the subject of the Pending Cases.

26 C. The automatic stay that is in effect under 11 U.S.C. § 362(a) as a result of
27 the chapter 7 bankruptcy case of Sanjeev and Mina Acharya remains in full force and
28 effect so that the Pending Cases may proceed only with respect to the receivership

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1 entities and as permitted by this Stipulation, and not as to Mr. or Mrs. Acharya. For the
2 avoidance of doubt, nothing herein shall affect the exceptions to the automatic stay
3 contained in Section 362(b) of the Bankruptcy Code.

4 D. By signing below, the undersigned counsel represent that they have the
5 authority to sign this Stipulation on behalf of their clients.

6 **IT IS SO STIPULATED.**

8 DATED: December 8, 2021

SMILEY WANG-EKVALL, LLP

10 By: /s/ Kyra E. Andrassy
11 KYRA E. ANDRASSY
12 Counsel for David Stapleton

13 DATED: December 8, 2021

SECURITIES AND EXCHANGE COMMISSION

15 By: /s/ Michael Sew Hoy
16 MICHAEL SEW HOY
17 Counsel for Plaintiff Securities and Exchange
Commission

18 DATED: December 8, 2021

COOLEY, LLP

21 By: /s/ Walker Newell
22 WALKER NEWELL
23 Counsel for Sanjeev Acharya

24 [Signatures continue on next page]

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1 DATED: December 8, 2021

RILEY PASEK CANTY LLP

2

3

By: /s/ Joseph A. Seltzer

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JOSEPH A. SELTZER

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Counsel for Downtown Gateway Homeowners Association; Crown Court/Park Place

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Homeowners Association; Madison Place

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Homeowners Association; and Alexis

Homeowners Association

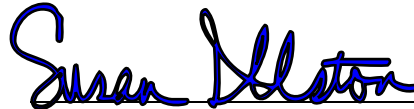
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

9

DATED: December 9, 2021

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SUSAN ILLSTON

United States District Judge

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