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9 (Special Appearance)

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

18 Defendants.

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

Status Conference:

Date: March 25, 2022

Time: 3:00 p.m.

Court: Hearing via Zoom

Judge: Hon. Susan Illston

19 **OPPOSITION TO RECEIVER'S STATEMENT RE RECHARACTERIZATION**
20 **OF SRIRAMA PURCHASE AGREEMENTS**
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1 Vectis Law specially appears on behalf of Anantha Srirama (“**Srirama**”) with respect to the
2 Statement of Position of The Receiver Regarding Recharacterization Or Invalidation of the Purchase
3 and Sale Agreements with Anantha Srirama [Docket No.278] (the “**Receiver Statement**”) pursuant to
4 which the Receiver seeks extraordinary declaratory relief sans even a modicum of due process.

5
6 **SUMMARY OF ARGUMENT**

7 The Receiver, for the sole benefit of Acres Capital (“**Acres**”), seeks extraordinary declaratory
8 relief against Srirama without even initiating a complaint. The Receiver does not suggest that Srirama
9 has appeared in the case or that the Receiver ever properly served Srirama.¹ The Receiver is
10 nonetheless proceeding based on apparently no more than its agreement with Acres to seek
11 extraordinary declaratory relief without even serving Srirama with a complaint. The Receiver never
12 offers any justification for seeking extraordinary relief without the procedural safeguards guaranteed to
13 defendants by prosecuting a complaint, and no provisions of the Court’s order either authorizing the
14 receivership or the Acres funding sanction the severe truncation of Srirama’s due process rights. Nor
15 is there any attempt to justify the extraordinarily short timeline for resolution of the alleged
16 controversy.
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18 The Receiver’s substantive grounds for seeking recharacterization are woefully deficient:

- 19
- 20 • The Receiver’s wholly unsubstantiated speculation that Srirama’s agreements must be
21 the result of a restructuring of prior debt -- the simple fact is that there is no such
22 restructuring of prior debt;
 - 23 • The Receiver mere “hints” that the Srirama agreements may contain a repurchase
24 obligation. The simple truth is that there is no such repurchase obligation: Srirama
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28 ¹ By specially appearing through Vectis Law, Srirama is not waiving any argument that the Court lacks personal or subject matter jurisdiction.

1 simply provided the applicable seller with the ability to market the property no more;

- 2
- 3 • The Receiver alleges that Srirama’s purchase agreements violated the terms of the
 - 4 Acres construction loans. Even if borne out, such allegations merely present a basis
 - 5 for Acres -- not the Receiver -- to bring an action seeking to invalidate the Srirama
 - 6 agreements. Why isn’t Acres taking that action unless it is implicitly acknowledging
 - 7 that it has no ability to do so?

8 In short, the Receiver’s attempt to proceed without a complaint is grossly deficient on both procedural
9 and substantive grounds.

10 **ARGUMENTS**

11 **I. THE RECEIVER STATEMENT AND THE PROPOSED PROCEDURES TO**
12 **BE IMPLEMENTED VIOLATE SRIRAMA’S DUE PROCESS RIGHTS**

13 At the behest of Acres, the Receiver seeks extraordinary declaratory relief against Srirama
14 without a complaint, service of process or even an appearance by Srirama. Such a process violates
15 Srirama’s fundamental due process rights. And short of offering his attorneys with an unbound free
16 billing opportunity, the Receiver provides no explanation of why Srirama’s rights are being so blithely
17 gutted.

18

19 **A. The Extraordinary Declaratory Relief**
20 **Sought By The Receiver Necessary**
21 **Requires A Complaint**

22 The Receiver seeks extraordinary declaratory relief against Srirama to either invalidate his
23 purchase agreements or hold that they are in fact unsecured loans. Such declaratory relief must
24 necessarily proceed by complaint. It is unclear how such a request for extraordinary declaratory relief
25 came to be sought without a complaint: the genesis appears to be no more than an arrangement
26 concocted between the Receiver and Acres that was pursued through a discussion at status conference -
27 - to which Srirama was not even a party. Missing from the entire equation is Srirama’s due process
28 rights.

1 The Order On Plaintiff Securities And Exchange Commission's Motion For Appointment Of
2 Receiver [Docket No.63] (the "**Receivership Order**") certainly contemplated that the Receiver would
3 bring a legal action, i.e., file a complaint for relief, "based on law or equity". Similarly, the Order As
4 Amended Granting Motion Of Receiver For Order Approving Construction Funding Agreement with
5 Acres Capital [Docket No.249] (the "**Acres Finance Order**") never suggests such extraordinary
6 declaratory relief short of a complaint. Circumventing Srirama's due process rights through a fast-
7 tracked motion concocted between the Receiver and Acres and presented to the Court at a status
8 conference as a virtual fiat accompli is wholly unjustified and unprecedented. The fact that the
9 Receiver and Acres find it convenient to strip Srirama of his due process rights is no reason for the
10 Court to accede.

11
12 **B. Requesting The Receiver To Actually**
13 **File And Prosecute A Complaint May**
14 **Expose A Number Of Serious Procedural**
15 **And Substantive Deficiencies**

16 Neither the Receiver, Acres, nor the Court has proffered any compelling rationale for why the
17 declaratory relief sought by the Receiver should not proceed by complaint. The safeguards ensured by
18 regular due process are multitude and ought not be lightly dismissed. Just by way of example,
19 requiring a complaint entitles Srirama to challenge the Receiver's standing order under F.R.C.P. 17
20 which requires that any action for relief be prosecuted in the name of the real party in interest. The
21 Receiver has acknowledged that Acres -- not the Receiver -- is the real party in interest with respect to
22 the requested declaratory relief:

23 "Because these effort [i.e., the recharacterization efforts] are expected to
24 likely inure solely for Acres' benefit... Acres has agreed to pay the allowed
25 fees and costs that counsel for the Receiver incurs in connection with these
26 efforts, regardless of the outcome." Motion Of Receiver for Order Approving
27 Construction Funding Agreement With Acres Capital [Docket No.211] (the
28 "**Financing Motion**")

Is the Receiver any more than the mere shell for Acres? What appears evident is that the

1 Receiver has sold his standing to Acres in exchange for little more than a fee opportunity for his fee
2 hungry attorneys. F.R.C.P. 17 certainly entitles Srirama to challenge the relief sought by the Receiver
3 at Acres behest and expense on grounds that the Receiver is not the real party in interest. But the
4 ability to present that challenge necessarily proceeds by response to a complaint.

5
6 **C. The Time-Frame Proposed By Acres
And The Receiver Has No Justification**

7 The process concocted by the Receiver and Acres for challenging Srirama's agreements not
8 only eviscerates all of Srirama's process rights, but is inexplicable short. Not only does the Receiver
9 fail to explain why he cannot proceed by complaint, but he fails to explain why discovery should be
10 completed by May 31, 2022.

11
12 Srirama is not adverse to a reasonably expedited schedule following the filing of a complaint
13 for declaratory relief by the real party in interest, so long as it sets a schedule for a complaint and other
14 responsive pleadings to be filed. But setting a discovery bar date of May 31, 2022 before a complaint
15 and responsive pleadings are even filed is unreasonable and inappropriate.

16 **II. THE RECEIVER'S SUBSTANTIVE ARGUMENTS FOR RECHARACTERIZATION**
17 **ARE WOEFULLY DEFICIENT**

18 The Receiver's substantive arguments for advocating Acres' agenda amount to the following:

- 19 (i) The Receiver's wholly unsubstantiated speculation that Srirama's purchase agreements are
20 an unspecified "restructuring";
21 (ii) The Receiver's unfounded speculation that the Srirama agreements contain some sort of
22 repurchase obligation;
23 (iii) Srirama agreements were allegedly concealed from Trigate; and
24 (iv) Srirama's purchase agreements allegedly violated the terms of the Acres Loan Origination.
25

26 None of these allegations -- whether considered separately or together -- provide grounds for
27 the extraordinary declaratory relief sought by the Receiver on behalf of Acres.
28

1 **A. There Is No Basis To Find That The**
2 **Srirama Agreements Represent A**
3 **Restructuring**

4 The Receiver’s speculates without any evidence that the Srirama agreements represent a
5 restructuring of prior arrangements while conveniently ignoring the substantial new funds advanced by
6 Srirama with each of the purchase agreements. There was no restructuring of prior debt. The entire
7 recharacterization argument is no more than a ploy by Acres to increase its profits on the projects, and
8 the fact that the Receiver is doing no more than serving as the shell for Acres for a fee opportunity only
9 serves to underscore the need that the requested extraordinary relief be pursued by complaint.

10 **B. There Is No Repurchase Obligation**

11 The Receiver hints that the Srirama agreements contain a repurchase obligation [Receiver
12 Statement, p.2, ln 8-9]. Of course there is no repurchase obligation of any kind. Srirama does not
13 dispute that he gave the seller the right to market the involved units, but such agreement is a far cry
14 from any obligation to repurchase. The fact that the Receiver would make such a contention to
15 advance Acres’ agenda merely underscores the need to proceed down the appropriate procedural path,
16 i.e., a complaint for declaratory relief.

17 **C. Any Alleged Failure To Disclose The**
18 **Srirama Agreements To Trigate Is Not**
19 **Grounds For The Receiver’s Declaratory**
20 **Relief**

21 The Receiver’s allegation that the Srirama agreements were not disclosed to Trigate fails to
22 present any grounds to recharacterize the Srirama agreements as loans:

- 23 • If there were any basis to claim that Trigate was not timely provided with the information
24 concerning the Srirama agreements and had suffered damages thereby, it would be a matter for
25 Trigate to pursue, not the Receiver at the behest of Acres. The Receiver has failed to suggest
26 any theory on which the seller was in any manner harmed; and
- 27 • The Receiver has wholly failed to “connect the dots” as to why an alleged injury to Trigate is
28

1 the basis for a recharacterization that benefits only Acres. If Trigate believes that it was
2 materially harmed by the Srirama agreements, Trigate -- not the Receiver at the behest of
3 Acres -- should seek relief by complaint.

4 **D. Any Alleged Breach Of The Acres**
5 **Construction Loan Is Not Grounds For**
6 **Extraordinarily Declaratory Relief**

7 The Receiver argues that the Srirama agreements allegedly somehow constituted a breach --
8 material or otherwise -- of the Acres Construction Loan Origination. Even if ultimately proven, such
9 breach fails to present any basis for the extraordinary relief requested for numerous reasons.

10 Foremost among those reasons is that a breach of the Acres Loan Origination is a matter for
11 Acres to pursue as the secured creditor: Acres has more than sufficient legal rights and remedies to
12 pursue a violation of secured loan terms and there is no reason for the Court to endorse the Receiver to
13 play Acres' cat's paw. The mere fact that Acres declines to exercise its own remedies but seeks to
14 employ the Receiver as its cat's paw raises substantial and unresolved questions as to why this
15 extraordinary relief is sought short of a complaint.
16

17 The Receiver complains that Srirama's deposits were used for purposes other than the Almaden
18 and Osgood projects. How SiliconSage Builders ("SS") may have used or misused Srirama's deposits
19 is a matter over which Srirama had no control. Rather, it is a matter between the seller and Acres over
20 which Acres had the requisite control but evidently failed to properly monitor. Acres cannot blame
21 Srirama for Acres' failure to police its collateral in SS's control, and Acres' failure to monitor its
22 collateral is not a basis for the extraordinary relief sought by Acres through the Receiver.
23

24 **CONCLUSION**

25 The Receiver Statement is presumably the Receiver's best stab at justifying its acting as Acres'
26 skill: Srirama submits that the statement necessarily fails miserably. If the Receiver seeks declaratory
27 relief, there is no reason why that relief should not be sought by complaint and the associated
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1 procedural safeguards. Acres and the Receiver cannot negotiate away Srirama's due process rights
2 amongst themselves.

3 Dated: February 10, 2022

Respectfully Submitted,

4 VECTIS LAW

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6 By: /s/ Patrick Costello
7 Patrick M. Costello
8 Attorneys for Anantha Srirama
(Special Appearance)

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