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

10  
11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 v.

14 SILICONSAGE BUILDERS, LLC aka  
15 SILICON SAGE BUILDERS and  
16 SANJEEV ACHARYA,

17 Defendants.

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

**NOTICE AND MOTION OF RECEIVER,  
DAVID STAPLETON, FOR AN ORDER  
RELATED TO LITTLE PORTUGAL  
GATEWAY, LLC: (1) AUTHORIZING THE  
RECEIVER TO ENTER INTO AN  
AGREEMENT TO GIVE THE SECURED  
CREDITOR A DEED IN LIEU OF  
FORECLOSURE; AND (2) APPROVING  
THE ABANDONMENT BY THE  
RECEIVERSHIP ESTATE OF THE REAL  
PROPERTY OWNED BY LITTLE  
PORTUGAL GATEWAY, LLC**

**[Memorandum of Points and  
Authorities Filed Concurrently]**

Hearing on Shortened Time:

Date: June 3, 2022

Time: 10:00 a.m.

Crtrm.: 1 – 17<sup>th</sup> Floor (hearing via Zoom)

Judge: Susan Illston

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1 **TO ALL PARTIES IN INTEREST:**

2 **PLEASE TAKE NOTICE** that David Stapleton, the Court-appointed receiver (the  
3 "Receiver") over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together,  
4 the "Receivership Entities"), is moving for an order in aid of the receivership that  
5 authorizes the Receiver to enter into a Deed in Lieu of Foreclosure Agreement (the  
6 "Agreement") with 34<sup>th</sup> Alum Rock Holding Company, LLC, the lender ("Lender") with a  
7 lien against real property owned by Little Portugal Gateway, LLC, and to abandon the  
8 real property (the "Motion"). Pursuant to the *Stipulation Pursuant to Local Civil Rule 6-1*  
9 *Shortening the Time for Notice of the Hearing on the Motion of Receiver, David*  
10 *Stapleton, for an Order Related to Little Portugal Gateway, LLC: (1) Authorizing the*  
11 *Receiver to Enter Into an Agreement to Give the Secured Creditor a Deed on Lieu of*  
12 *Foreclosure; and (2) Approving the Abandonment by the Receivership Estate of the Real*  
13 *Property Owned by Little Portugal Gateway, LLC; Order Thereon, the Court has set the*  
14 hearing on the Motion for **June 3, 2022 at 10:00 a.m. Any opposition to the Motion**  
15 **must be filed with the Court and served on counsel for the Receiver by June 1,**  
16 **2022, at 4:00 p.m.**

17  
18 **I. BACKGROUND INFORMATION**

19 Little Portugal owns one of two parcels that would be required to complete  
20 development of a fully-entitled condominium development project located at 1665 Alum  
21 Rock Avenue in San Jose, CA (the "Property"). The Property is encumbered by a deed  
22 of trust in favor of the Lender that secures a debt that totaled approximately \$2.34 million  
23 as of December 31, 2021.

24 Prior to the Receiver's appointment, SiliconSage Builders signed an agreement to  
25 purchase the second parcel needed for the development, but allegedly breached that  
26 agreement. Because the seller expressed to the Receiver a continued willingness to sell  
27 the parcel, the Receiver marketed the parcels together as that would have yielded a  
28 significantly higher price than marketing only the parcel owned by Little Portugal.

1 Unfortunately, the Receiver did not receive any viable offers for the full assemblage. As  
2 a result, during Q3 2021, the Receiver made the decision to market only the parcel that  
3 Little Portugal Gateway, LLC owns. He accepted an offer to purchase the property for  
4 \$2.5 million, which would have required concessions from the senior lienholder that the  
5 lienholder has indicated it was willing to give. Escrow was opened but during due  
6 diligence, the proposed buyer learned it was unable to obtain a grant that it required to  
7 complete the purchase. The broker explored some alternatives, but no acceptable offer  
8 has been forthcoming.

9 In the meantime, counsel for the Receiver recently received a phone call from the  
10 Santa Clara District Attorney's Office because the Property is apparently the site of a  
11 homeless encampment and illegal activity is occurring on and near the Property. Under  
12 the circumstances, the receivership estate does not have the ability to remedy the issues  
13 at the Property. The Receiver therefore reached out to the Lender, who has agreed to  
14 take a deed in lieu of foreclosure pursuant to the terms of the Agreement and to quickly  
15 take steps to address the County's concerns. The deed-in-lieu of foreclosure is the  
16 preferred approach because it is quicker than giving the Lender authority to continue with  
17 its state law foreclosure remedies and will more quickly address the issues at the  
18 Property. Under the terms of the Agreement, in addition to conveying the Property, the  
19 Receiver will sign a bill of sale conveying any personal property owned by Little Portugal  
20 and all intangible property, which will include the entitlements and any permits obtained  
21 related to the project. The Receiver is not aware of the existence of any personal  
22 property owned by Little Portugal located at the Property, so the execution of the bill of  
23 sale is being signed out of caution to avoid a second motion in the event such property  
24 exists. A UCC search for Little Portugal revealed only one lien, and it is in favor of the  
25 Lender.

26 Pursuant to the order limiting notice in this case, both the Motion and the  
27 Memorandum are being made available on the website for this receivership, which is  
28

1 [www.siliconsagereceivership.com](http://www.siliconsagereceivership.com), or by contacting proposed counsel for the Receiver at  
2 [kandrassy@swelawfirm.com](mailto:kandrassy@swelawfirm.com).

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4 **II. RELIEF SOUGHT**

5 Based on the foregoing and for the reasons set forth in the Memorandum of Points  
6 and Authorities, the Receiver seeks entry of an order:

7 (1) Granting the Motion;

8 (2) Authorizing the Receiver to enter into the Agreement and to execute any  
9 documents necessary to consummate the Agreement, including the Deed in Lieu of  
10 Foreclosure and the Bill of Sale;

11 (3) Authorizing the conveyance of any personal property owned by Little  
12 Portugal located at the Property to the Lender free and clear of liens, claims, and  
13 encumbrances;

14 (4) Authorizing any title company to rely upon this Order for the Receiver's  
15 authority to convey title to the Property;

16 (5) Abandoning the receivership estate's interest in the Property retroactive to  
17 February 10, 2021, the date that the Receiver was appointed; and

18 (6) Granting such other and further relief as the Court may deem just and  
19 proper.

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21 DATED: May 25, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

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