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7 Counsel for David Stapleton, Receiver

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
SANJEEV ACHARYA,

16 Defendants.

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

**NOTICE AND MOTION OF RECEIVER,
DAVID STAPLETON, FOR AN ORDER
AUTHORIZING THE ABANDONMENT
BY THE RECEIVERSHIP ESTATE OF
REAL PROPERTY OWNED BY
PERALTA AT FREMONT, LLC AND
PROVIDING RELIEF FROM THE
RECEIVERSHIP ORDER**

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

17 Hearing:

18 Date: July 8, 2022

19 Time: 10:00 a.m.

20 Crtrm.: 1 – 17th 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"), has determined that the real property owned by Peralta at
 5 Fremont, LLC, is overencumbered and burdensome to the receivership estate. The real
 6 property is located at 37358-37494 Fremont Blvd., 3804/3780 Peralta Blvd.,
 7 and 37417 Jason Way, Fremont CA (together, the "Property"). After more than a year of
 8 marketing the Property, the Receiver accepted an offer that then fell out of escrow during
 9 due diligence, and the Receiver has not located a new buyer. Therefore, to minimize any
 10 liability of the receivership estate for issues related to the condition of the Property, the
 11 Receiver is seeking entry of an order abandoning the interest of the receivership estate in
 12 the Property, and providing that effective upon entry of an order granting this Motion, the
 13 Property is no longer subject to the protections of the *Order on Plaintiff Securities and*
 14 *Exchange Commission's Motion for Appointment of Receiver* and parties with an interest
 15 in the Property may exercise their state law remedies solely with respect to the Property.

16 Unless the Court issues an order in advance of the hearing, the Court will be
 17 conducting the hearing by Zoom, and instructions for appearing at the hearing will be
 18 posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a), any**
 19 **written opposition to the relief sought in the Motion must be filed with the Court**
 20 **and served on counsel for the moving party by no later than fourteen (14) days**
 21 **after the filing of this Motion, which is occurring on June 3, 2022.**

22 Concurrently with this Motion, the Receiver is filing his Memorandum of Points and
 23 Authorities in support of the Motion and the supporting declarations of Jeff Aguilar and
 24 David Stapleton (together, the "Memorandum"). Pursuant to the order limiting notice in
 25 this case, both the Motion and the Memorandum are available on the website for this
 26 receivership, which is www.siliconsagereceivership.com, or by contacting proposed
 27 counsel for the Receiver at kandrassy@swelawfirm.com.

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

3 (1) Granting the Motion;

4 (2) Authorizing the Receiver to abandon the interest of the receivership estate
5 in the Property;

6 (3) Providing that as a result of the abandonment and effective upon entry of
7 the Order, the Property will no longer be subject to the terms and conditions of the *Order*
8 *on Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver*
9 and parties, including but not limited to Fremont Peralta Holding Company, LLC, may
10 exercise their state law remedies solely with respect to the Property without the necessity
11 of a further Court order. Such remedies include, but are not limited to, enforcing any
12 rights and remedies under their deeds of trust or applicable law such as foreclosure or
13 seeking the appointment of a receiver; and

14 (4) Granting such other and further relief as the Court may deem just and
15 proper.

17 DATED: June 3, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

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20 By: /s/ Kyra E. Andrassy
21 KYRA E. ANDRASSY
22 Counsel for David Stapleton, Receiver
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PROOF OF SERVICE

STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On **6/3/2022**, I served true copies of the following document(s) described as **NOTICE AND MOTION OF RECEIVER, DAVID STAPLETON, FOR AN ORDER AUTHORIZING THE ABANDONMENT BY THE RECEIVERSHIP ESTATE OF REAL PROPERTY OWNED BY PERALTA AT FREMONT, LLC AND PROVIDING RELIEF FROM THE RECEIVERSHIP ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) – Pursuant to United States District Court, Northern District of California, the foregoing document will be served by the court via NEF and hyperlinked to the document. On **6/3/2022**, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

(X) (BY U.S. MAIL). I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

() (BY E-MAIL). By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

() (BY FACSIMILE). I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on _____, at Costa Mesa, California.

() STATE I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

(X) FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 3, 2022, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

SERVICE LIST

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Fremont Peralta Holding Company, LLC c/o Saul Rostamian Sheppard Mullin 1901 Avenue of the Stars, Suite 1600 Los Angeles, CA 90067- 6017	Max Benjamin Partners, Inc. Attn: Max Mellman 8447 Wilshire Blvd. Suite 100 Beverly Hills, CA 90211	Max Benjamin Partners, Inc. c/o Rick Reynolds, Esq. 1851 East First St., Suite 1550 Santa Ana, CA 92705- 4067
Rebuild Green, Inc. c/o Roderick Cooper 2625 Middlefield Rd., Unit 106 Palo Alto, CA 94306	Rebuild Green, Inc. c/o Corey Pollak, Esq. Pollak Law LP 700 El Camino Real, Suite 201 Milbrae, CA 94030	