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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

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

17 Defendants.

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

**NOTICE AND MOTION OF RECEIVER,
DAVID STAPLETON, FOR ORDER
POOLING ASSETS AND LIABILITIES
BECAUSE THE RECEIVERSHIP
ENTITIES OPERATED AS A UNITARY
ENTERPRISE**

**[Memorandum of Points and
Authorities and Declarations of Quintin
Brown and David Stapleton in Support
Thereof Filed Concurrently]**

Date: February 17, 2023
Time: 3:00 p.m.
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
3 (“Receiver”) over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together,
4 the “Receivership Entities”) is seeking approval of a motion to pool the assets and
5 liabilities of the Receivership Entities because of their extensive commingling of funds
6 and because they were operated as a unitary enterprise that perpetuated an investment
7 fraud. The hearing is scheduled for February 17, 2023, at 3:00 p.m., unless the hearing
8 is moved by the Court.

9 Unless the Court issues an order in advance of the hearing, the Court will be
10 conducting the hearing by Zoom, and instructions for appearing at the hearing will be
11 posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a), any**
12 **written opposition to the relief sought in this motion must be filed with the Court**
13 **and served on counsel for the moving party by no later than fourteen (14) days**
14 **after the filing of this motion, which is occurring on January 13, 2023.**

15 Concurrently with this motion, the Receiver is filing his Memorandum of Points and
16 Authorities in support of the motion and the supporting declarations of Quintin Brown and
17 David Stapleton (together, the “Memorandum”). Pursuant to the order limiting notice in
18 this case, both the motion and the Memorandum are available on the website for this
19 receivership, which is www.siliconsagereceivership.com, or by contacting proposed
20 counsel for the Receiver at kandrassy@swelawfirm.com.

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

- 23 (1) Granting the Motion;
- 24 (2) Ordering that the assets and liabilities of the Receivership Entities be
25 pooled, except that this shall not affect valid liens that are secured by property of the
26 Receivership Estate;

1 (3) Finding that the pooling of liabilities is without prejudice to the ability of the
2 Balbach Investor Group to raise the issue of how the assets are distributed in connection
3 with the Receiver's distribution plan; and

4 (4) Granting such other and further relief as the Court deems just and proper.
5

6 DATED: January 13, 2023

Respectfully submitted,

7 SMILEY WANG-EKVALL, LLP
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9 By: /s/ Kyra E. Andrassy

10 KYRA E. ANDRASSY

11 Attorneys 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 **1/13/2023**, I served true copies of the following document(s) described **NOTICE AND MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER POOLING ASSETS AND LIABILITIES BECAUSE THE RECEIVERSHIP ENTITIES OPERATED AS A UNITARY ENTERPRISE** 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 **1/13/2023**, 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 January 13, 2023, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

SERVICE LIST

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