

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 **SMILEY WANG-EKVALL, LLP**
Kyra E. Andrassy, State Bar No. 207959
2 *kandrassy@swelawfirm.com*
Michael L. Simon, State Bar No. 300822
3 *msimon@swelawfirm.com*
Timothy W. Evanston, State Bar No. 319342
4 *tevanston@swelawfirm.com*
3200 Park Center Drive, Suite 250
5 Costa Mesa, California 92626
Telephone: 714 445-1000
6 Facsimile: 714 445-1002

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 ORDER IN
AID OF RECEIVERSHIP REMOVING
WALNUT MORGAN HILL, LLC, AND
WHITELEAF SOFTWARE SOLUTIONS
PRIVATE LIMITED FROM THE
RECEIVERSHIP ESTATE**

**[Memorandum of Points and
Authorities and Declaration of David
Stapleton Filed Separately]**

Date: December 1, 2023
Time: 10:00 a.m.
Crtrm.: 1 – 17th Floor
Judge: Susan Illston

20
21 **TO ALL PARTIES IN INTEREST:**

22 **PLEASE TAKE NOTICE** that David Stapleton, the Court-appointed receiver (the
23 "Receiver") over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together,
24 the "Receivership Entities"), hereby moves (the "Motion") the Court for an order in aid of
25 the receivership that removes Walnut Morgan Hill, LLC ("Walnut Morgan Hill"), a
26 Delaware limited liability company, and Whiteleaf Software Solutions Private Limited
27 ("Whiteleaf"), an Indian corporation, from the receivership estate because neither entity
28 has any value for investors or creditors and they instead pose a liability to the

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 receivership estate. The hearing is scheduled for **December 1, 2023 at 10:00 a.m.**,
2 unless the hearing time is moved by the Court.

3 Unless the Court issues an order on the Motion in advance of the hearing, the
4 Court will be conducting the hearing by Zoom, and instructions for appearing at the
5 hearing will be posted approximately two days prior to the hearing. **Pursuant to Local
6 Rule 7-3(a), any written opposition to the relief sought in this motion must be filed
7 with the Court and served on counsel for the moving party by no later than
8 fourteen (14) days after the filing of this motion, which is occurring on October 6,
9 2023.**

10 Concurrently with this Motion, the Receiver is filing his Memorandum of Points and
11 Authorities in support of the Motion and the supporting declaration of David Stapleton. A
12 copy of this Memorandum and these declarations are available on the website for this
13 receivership, which is www.siliconsagereceivership.com, or by contacting counsel for the
14 Receiver at kandrassy@swelawfirm.com.

15 A summary of the basis for the relief sought in the Motion is as follows:

16
17 **SUMMARY OF BASIS FOR RELIEF**

18 In late December 2020, the Securities and Exchange Commission (the "SEC")
19 commenced this litigation against defendants SiliconSage Builders, LLC ("SSB"), and
20 Sanjeev Acharya (together, the "Defendants") alleging violations of federal securities
21 laws. On February 10, 2021, the Court issued a preliminary injunction and entered the
22 Receivership Order, appointing the Receiver over SiliconSage Builders, LLC, and its
23 affiliates and subsidiaries, including Walnut Morgan Hill and 53 other specifically-
24 identified entities. Whiteleaf was not listed. In connection with the Receivership Order,
25 the Court issued a preliminary injunction against the Defendants from transferring or
26 otherwise dissipating assets.

27
28

Walnut Morgan Hill

1
2 In 2017, SSB acquired land at 17374 Walnut Grove Drive, Morgan Hill, CA 95037
3 (the “Morgan Hill Property”) from Newland Homes for a total purchase price of
4 \$1,650,000. To help fund the purchase price, SSB obtained a loan of \$1.1 million from
5 CJ Investment Services, Inc. that was secured by a deed of trust against the Morgan Hill
6 Property. The loan was intended to be a short term note to be repaid in December 2018,
7 although the maturity date was twice extended, most recently to March 1, 2020. In April
8 2019, SSB conveyed the property to Walnut Morgan Hill, an entity that SSB formed in
9 October 2018 and for which it served as the manager.

10 At some point in time, an investor named Mahis Invesco invested \$580,000 as an
11 option loan to Walnut Morgan Hill, although loan documents were apparently never
12 actually executed. The same investor invested \$840,000 with the SiliconSage Bridge
13 Fund and another \$500,000 to an unnamed entity. On April 1, 2020, and presumably
14 because of pressure being put on Mr. Acharya by that investor, SSB entered into a
15 Membership Interest Purchase Agreement in which it agreed to sell its membership
16 interest in Walnut Morgan Hill to Mahis Invesco for \$100 and an agreement that Mahis
17 Invesco’s prior loans to Walnut Morgan Hill and \$840,000 of its loan/investment with
18 SiliconSage Bridge Fund would be deemed satisfied. This Membership Interest
19 Purchase Agreement was part of a larger transaction under which SSB also agreed to
20 pay Mahis Invesco \$400,000 upon completion of Alum Rock, LLC, and \$100,000 from the
21 completion of a property in Hayward.

22 As of September 29, 2023, CJ Investment Services was owed \$1,465,244.34, with
23 interest at the rate of 9.5% per annum and late charges of \$870.83 a month continuing to
24 accrue. CJ Investment Services has agreed to look solely to the Morgan Hill Property for
25 repayment of its debt, so that it will not assert a claim against SSB for any deficiency. In
26 addition, the property taxes are in default, with total property taxes for the Morgan Hill
27 Property totaling \$354,652.31. Certain of those taxes are secured by the Morgan Hill
28

1 Property and must be paid by the owner in order to avoid foreclosure or to sell the
2 Morgan Hill Property.

3 The Receiver asked a broker with experience in the area for an informal opinion of
4 value and was told that the value is approximately \$2 million. Thus, there is equity in the
5 Morgan Hill Property of approximately \$180,103.35, but this does not take into account
6 the costs of sale and ongoing monthly carrying costs. Moreover, Mahis Invesco has
7 advised the Receiver that because of the pre-receivership change in ownership, it would
8 object to any attempt by the Receiver to administer the Morgan Hill Property. Evaluating
9 the facts as a whole and given that costs of sale of 6% (which would be on the low end)
10 would total \$120,000, leaving equity of only \$60,103.35 before taking into account the
11 interest and property taxes that would continue to accrue prior to any sale and the legal
12 fees that would be incurred in seeking approval of the sale over any objection, the
13 Receiver believes that the cost of administration would likely be exceeded by any benefit
14 that might be realized. The Receiver did inquire whether Mahis Invesco would be willing
15 to permit the Receiver to sell the Morgan Hill Property and to share the proceeds
16 between the receivership estate and Mahis Invesco, but the offer was declined without
17 any counteroffer.

18 Whiteleaf Software

19 In 2012, SiliconSage Inc. and Sanjeev Acharya formed Whiteleaf as an Indian
20 corporation to provide software development and accounting services to the Receivership
21 Entities. According to Mr. Acharya, it was formed to provide these services at a
22 significant discount to what they would cost if provided by an American corporation.
23 Whiteleaf wrote the code for the investor portal used by the Receivership Entities and
24 provided back office support for the Receivership Entities, including accounting services.
25 It apparently ceased operations shortly before the Receiver's appointment after
26 SiliconSage ceased being able to pay for the services being provided and employees
27 could not be paid. The Receiver is informed that Whiteleaf's assets consist of laptops,
28 most of which the employees kept because of the circumstances of their departure.

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 Whiteleaf’s most recent financial statements are attached as Exhibit “6” (with the values
2 reported in rupees) along with a ledger of payments received from the Receivership
3 Entities (also in rupees).

4 Indian law requires regular corporate filings in order for a corporation to remain in
5 good standing. The Receiver is also informed that owners or directors of an Indian
6 corporation that owes employees wages can be held criminally liable for wage theft or
7 similar crimes. In reviewing financial records and bank statements, the Receiver’s
8 forensic accountants did not notice any unusual transactions with Whiteleaf. The entity
9 needs to be wound down. Because the Receiver has no familiarity with that entity or with
10 Indian law and because there is no benefit to the receivership estate in incurring fees
11 winding down that entity and instead only risk, the Receiver seeks an order removing
12 Whiteleaf from the receivership estate and permitting Mr. Acharya to take the necessary
13 action to wind down the entity.

14
15 **RELIEF REQUESTED**

16 In light of the foregoing, the Receiver requests entry of an order:

17 (1) Granting the Motion;

18 (2) Providing that Walnut Morgan Hill is removed from the receivership estate
19 and from the protections of the Receivership Order retroactive to the Receiver’s
20 appointment and that the Receiver shall have no further duty or responsibility with
21 respect to this entity;

22 (3) Providing that Whiteleaf is removed from the receivership estate and from
23 any protections of the Receivership Order retroactive to the Receiver’s appointment and
24 that the Receiver has no duty or responsibility with respect to Whiteleaf;

25 (4) To the extent necessary, authorizing Sanjeev Acharya to execute
26 documents he deems reasonably necessary to wind down Whiteleaf in accordance with
27 Indian law; and
28

1 (5) Granting such other and further relief as the Court may deem just and
2 appropriate.

3

4

5 DATED: October 6, 2023

Respectfully submitted,

6

SMILEY WANG-EKVALL, LLP

7

8

By: /s/ Kyra E. Andrassy

9

KYRA E. ANDRASSY

10

Counsel for David Stapleton, Receiver

11

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 **10/6/2023**, I served true copies of the following document(s) described **NOTICE OF MOTION AND MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER IN AID OF RECEIVERSHIP REMOVING WALNUT MORGAN HILL, LLC, AND WHITELEAF SOFTWARE SOLUTIONS PRIVATE LIMITED FROM THE RECEIVERSHIP ESTATE** 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 **10/6/2023**, 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 October 6, 2023, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

SERVICE LIST

BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): **Kyra Elizabeth Andrassy**

kandrassy@swelawfirm.com,jchung@swelawfirm.com,lgarrett@swelawfirm.com,gcruz@swelawfirm.com

 Daniel Blau

blaud@sec.gov,leungg@sec.gov,leedanie@sec.gov,larofiling@sec.gov

 Tamar M. Braz

brazt@sec.gov

 Susan Scott Davis

sdavis@coxcastle.com

 Detail Construction & Waterproofing, Inc.

sjs@dslaw.net

 David B. Draper

david.draper@ropers.com,michelle.cecchini@ropers.com,mary.mcperson@ropers.com

 Timothy W Evanston

tevanston@swelawfirm.com,jchung@swelawfirm.com,lgarrett@swelawfirm.com,gcruz@swelawfirm.com

 Robert Paul Goe

rgoe@goeforlaw.com,kmurphy@goeforlaw.com

 Great American Insurance Company

dtobar@watttieder.com

 Mitchell Bruce Greenberg

mgreenberg@abbeylaw.com,mmeroney@abbeylaw.com

 John Henry Hemann

jhemann@cooley.com,mnarvaez@cooley.com,efilingnotice@cooley.com,efiling-notice@ecf.pacerpro.com

 Fred Hjelmeset

fhtrustee@gmail.com

 Ravi Jagannathan

btaylor@taylorlawfirmnpc.com

 Gregg Steven Kleiner

gkleiner@rinconlawllp.com,aworthing@rinconlawllp.com

 Edward Arthur Kraus

ekraus@svlg.com,keb@svlg.com,edn@svlg.com,amt@svlg.com

 Thomas Scott Leo

sleo@leolawpc.com,kmoores@watttieder.com,dtobar@watttieder.com

 Hal Mark Mersel

mark.mersel@bclplaw.com,theresa.macaulay@bclplaw.com

 Dennis Francis Murphy

dennismurphy@jonesday.com,cdelacroix@jonesday.com

 Randy Phillip Orlik

rorlik@coxcastle.com

 Brian Andrew Paino

bpaino@mcglinchey.com,irvineECF@mcglinchey.com

 Parkview Financial REIT LP

paul@parkviewfinancial.com

 Hannah Pollack

hpollack@cooley.com,efilingnotice@cooley.com,efiling-notice@ecf.pacerpro.com

 Marie Gisele Quashnock

marie@aqalegal.com,legaladmin@aqalegal.com

 Joshua Louis Scheer

jscheer@scheerlawgroup.com,jscheer@ecf.courtdrive.com

 Brian G. Selden

bgselden@jonesday.com,mreyes@jonesday.com

 Steven Jude Sibley

sjs@dslaw.net

 Benjamin Samuel Taylor

btaylor@taylorlawfirmnpc.com

 Donna Renee Tobar

dtobar@lynberg.com,fvillalobos@grsm.com,ecravey@grsm.com

BY U.S. MAIL:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sue Jamieson CJ Investment Services, Inc. P.O. Box 476 Capitola, CA 95010	Raja Devineni 1365 Lowrie Avenue, Suite C South San Francisco, CA 94080
--	---

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002