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7 Attorneys for David Stapleton, Receiver

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

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

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION OF RECEIVER, DAVID  
 STAPLETON, FOR AN ORDER  
 AUTHORIZING THE RECEIVER TO  
 ENTER INTO A SETTLEMENT  
 AGREEMENT WITH A. KHETAN;  
 DECLARATION OF DAVID STAPLETON  
 IN SUPPORT**

Date: December 1, 2023  
 Time: 10:00 a.m.  
 Ctrm.: 1 – 17th Floor (Hearing via Zoom)  
 Judge: Susan Illston

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1 **I. INTRODUCTION**

2 In accordance with Local Rule 66-2, the Order on Plaintiff Securities and  
3 Exchange Commission's Motion for Appointment of Receiver [Docket No. 63] (the  
4 "Receivership Order"), and the law governing federal equity receiverships, David  
5 Stapleton, the Court-appointed receiver (the "Receiver") over SiliconSage Builders, LLC,  
6 and its subsidiaries and affiliates (together, the "Receivership Entities"), submits this  
7 memorandum of points and authorities in support of his Motion for an order authorizing  
8 the Receiver to enter into a settlement agreement with Amit Khetan ("Khetan"). After  
9 finishing its analysis, the Receiver's forensic accountant has concluded that the  
10 Receivership Entities extensively commingled funds and used funds from newer  
11 investors to make payments to older investors. Based on this review, the Receiver has  
12 concluded that the Receivership Entities were operating a Ponzi scheme and that  
13 Khetan, along with some other investors, received funds in excess of the amount they  
14 invested. Under Ninth Circuit precedent, investors in a Ponzi scheme are not entitled to  
15 keep funds they receive in excess of their total investment.

16 In settlement of the Receiver's demand for a return of the profit he received, the  
17 Receiver and Khetan have agreed, subject to Court approval, that Khetan will pay the  
18 Receiver \$76,813.24, which is 80% of the amount the Receiver demanded Khetan return.  
19 The settlement avoids unnecessary litigation that could prove time-consuming and costly,  
20 with litigation costs likely exceeding any ultimate recovery even if the Receiver prevails.  
21 The settlement agreement guarantees a return and is in the best interest of the  
22 receivership estate. Accordingly, the Receiver requests approval of the settlement.

23  
24 **II. BACKGROUND FACTS**

25 **A. The Securities and Exchange Commission Commences Its**

26 In late December 2020, the Securities and Exchange Commission (the "SEC")  
27 commenced this litigation against defendants SiliconSage Builders, LLC ("SSB"), and  
28 Sanjeev Acharya (together, the "Defendants") alleging violations of federal securities

1 laws. The SEC concurrently filed a motion for a preliminary injunction and for the  
 2 appointment of a Receiver over not just SSB, but all of its affiliates and subsidiaries. The  
 3 SEC's motion for preliminary injunction was supported by substantial evidence and  
 4 described how Acharya conducted business through his various corporate entities. For  
 5 instance, the motion presented testimony from an accountant who worked for Acharya  
 6 over an eight-month period as an accounting consultant, who testified that expenses  
 7 were often misclassified and funds were frequently commingled.<sup>1</sup> The motion also  
 8 presented evidence of how investor funds were funneled into the Receivership Entities,  
 9 with some investors contributing funds in exchange for equity interests, others loaning  
 10 money via promissory notes, and others investing through SiliconSage Bridge Fund, LLC.

11 **B. The Court's Appointment of the Receiver and the Receiver's**  
 12 **Confirmation of the Receivership Entities' Commingling of Funds**

13 On February 10, 2021, the Court issued a preliminary injunction and entered the  
 14 Receivership Order, which vests the Receiver with control over all assets of the  
 15 receivership estate and authority to control it pending further order of this Court. Upon  
 16 his appointment, the Receiver took control of all of the books and records of the  
 17 Receivership Entities, including all of the electronic account records and access to online  
 18 banking records. Together, the Receivership Entities had 77 different bank accounts,  
 19 with the time period in question spanning eight years and including more than 130,000  
 20 different banking transactions.

21 Because of the massive volume of banking transactions, rather than do a  
 22 complete forensic accounting at significant expense to the estate, the Receiver instead  
 23 selected seven different entities and examined what happened with funds that were  
 24 loaned or invested by a lender or an investor. The Receiver selected the seven entities  
 25 because they owned real properties that the Receiver has either administered or  
 26

27 \_\_\_\_\_  
 28 <sup>1</sup> See *Plaintiff Securities and Exchange Commission's Notice of Motion and Motion for Preliminary Injunction and for Appointment of Receiver, and Memorandum in Support Thereof*, filed as Document No. 10.  
 2958721.1

1 abandoned during the course of his appointment. Consistent with the evidence  
2 presented by the SEC, the Receiver determined that the Receivership Entities  
3 extensively commingled funds and used money from new investors to make payments to  
4 older investors. Based on this evidence, the Court deemed the Receivership Entities a  
5 unitary enterprise so that their assets and liabilities are pooled.

6 Under the Receivership Order, the Receiver was charged with marshaling assets  
7 and given authority to enter into compromises related to Receivership Property in the  
8 ordinary course of business. The Receivership Order does not explicitly require Court  
9 authority for settlements in the ordinary course of business, but the Receiver is electing to  
10 err on the side of caution in obtaining Court approval.

11 **C. Funds Received by Amit Khetan and the Settlement Agreement**

12 According to the books and records, Khetan invested a total of \$100,000 and  
13 received a total of \$196,016.60 in payments from four different entities. Under applicable  
14 Ninth Circuit law, a receiver may recover the payments an investor received which are  
15 greater than the total amount invested by the investor in the Ponzi scheme. *See Donell*  
16 *v. Kowell*, 553 F. 3d 762, 770 (9th Cir. 2008). Here, Khetan received \$96,016.55 in  
17 excess of what he invested. Accordingly, the Receiver sent him a letter requesting that  
18 he return the profits or potentially face litigation. After some discussion, Khetan and the  
19 Receiver reached a settlement agreement regarding the Receiver's demand (the  
20 "Settlement Agreement"). A true and correct copy of the Settlement Agreement is  
21 attached hereto as Exhibit "1." Under the Settlement Agreement, Khetan will pay the  
22 Receiver \$76,813.24 by the later of November 30, 2023 or seven business days after the  
23 date the Court enters an order approving the Settlement Agreement. The Settlement  
24 Agreement further provides for a tolling of any applicable statute of limitations that would  
25 otherwise run until 60 days after the Settlement Agreement is void and of no effect.  
26 Finally, the Settlement Agreement provides for a mutual release of claims by Khetan and  
27 the Receiver, with the Receiver's release of claims effective once he receives the  
28 settlement payment from Khetan.

1

2 **III. LEGAL AUTHORITY**

3 "The power of a district court to impose a receivership or grant other forms of  
4 ancillary relief does not in the first instance depend on a statutory grant of power from the  
5 securities laws. Rather, the authority derives from the inherent power of a court of equity  
6 to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The  
7 "primary purpose of equity receiverships is to promote orderly and efficient administration  
8 of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d  
9 1034, 1038 (9th Cir. 1986).

10 District courts have the broad power of a court of equity to determine the  
11 appropriate action in the administration and supervision of an equity receivership. See  
12 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit  
13 explained:

14 A district court's power to supervise an equity receivership and to  
15 determine the appropriate action to be taken in the administration  
16 of the receivership is extremely broad. The district court has  
17 broad powers and wide discretion to determine the appropriate  
18 relief in an equity receivership. The basis for this broad deference  
19 to the district court's supervisory role in equity receiverships  
arises out of the fact that most receiverships involve multiple  
parties and complex transactions. A district court's decision  
concerning the supervision of an equitable receivership is  
reviewed for abuse of discretion.

20 *Id.* (citations omitted); see also *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th  
21 Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we  
22 generally uphold reasonable procedures instituted by the district court that serve th[e]  
23 purpose of orderly and efficient administration of the receivership for the benefit of  
24 creditors."). In connection with the administration of an estate, courts are deferential to  
25 the business judgment of bankruptcy trustees, receivers, and similar custodians. See,  
26 e.g., *Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the  
27 business management decisions of a trustee."); *Southwestern Media, Inc. v. Rau*, 708  
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1 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the form of . . . [estate  
2 administration] . . . rested with the business judgment of the trustee.").

3 The Receiver is seeking an order authorizing him to enter into the Settlement  
4 Agreement and take any actions reasonably necessary to consummate the settlement.  
5 The amount Khetan will pay under the Settlement Agreement is 80% of the amount the  
6 Receiver demanded. The Receiver believes that the proposed resolution is fair and  
7 reasonable and a proper exercise of his business judgment. The alternative would be for  
8 the Receiver to commence litigation against Khetan to recover the funds. However,  
9 litigation always involves a degree of risk. Any litigation to recover the funds paid to  
10 Khetan above his total investment could prove time-consuming, expensive, and may  
11 exceed the total amount the Receiver would ultimately recover. By entering into the  
12 Settlement Agreement, the Receiver is guaranteeing a return to the estate and not  
13 incurring additional fees litigating the dispute, which could potentially result in a lower  
14 overall recovery even if the Receiver prevailed. Accordingly, the Receiver requests that  
15 the Settlement Agreement be approved.

16  
17 **IV. CONCLUSION**

18 Based on the foregoing, the Receiver requests that the Court enter an order:

- 19 1. Granting the Motion;  
20 2. Authorizing the Receiver to enter into the Settlement Agreement and any  
21 documents and take any actions he deems reasonably necessary to consummate the  
22 settlement; and

23 ///

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1           3.       Granting such other and further relief as the Court may deem just and  
2 proper.

3 DATED: October 27, 2023

Respectfully submitted,

4 SMILEY WANG-EKVALL, LLP

5  
6 By:           /s/ Kyra E. Andrassy            
7 KYRA E. ANDRASSY  
8 Attorneys for David Stapleton, Receiver  
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**DECLARATION OF DAVID STAPLETON**

I, David Stapleton, declare as follows:

1. I am a party in the above-entitled action. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the Motion of Receiver, David Stapleton, for an Order Authorizing the Receiver to Enter Into a Settlement Agreement With Amit Khetan ("Motion"). Unless otherwise defined in this declaration, all terms defined in the Motion are incorporated herein by this reference.

2. As Receiver, I am now the custodian of books and records for SiliconSage Builders, LLC, and its affiliates and subsidiaries. Based on my forensic accountant's review and analysis of these books and records, I have determined: (1) that the Receivership Entities were used to operate a Ponzi scheme; and (2) that certain investors received funds in excess of the amount they invested.

3. Specifically, the books and records show that Khetan invested a total of \$100,000.00, but received a total of \$196,016.90 from the Receivership Entities. Through counsel, I have reached a settlement with Khetan concerning the return of the excess funds he received from the Receivership Entities under which he will return \$76,813.24, which is 80% of the profit he received.

4. Attached as Exhibit "1" is a true and correct copy of the Settlement Agreement with Amit Khetan.

5. I believe that the proposed settlement is fair and reasonable and a proper exercise of my business judgment. The alternative would be to commence litigation against Khetan to recover the funds. Litigation to recover the funds paid to Khetan above his investment could prove time-consuming, expensive, and may potentially exceed the

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1 total amount I would recover in litigation if I were to prevail.

2 I declare under penalty of perjury under the laws of the United States of America  
3 that the foregoing is true and correct.

4 Executed on this 25<sup>th</sup> day of October, 2023, at Solana Beach, California.



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David Stapleton

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# EXHIBIT "1"

## SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (“Settlement Agreement”) is entered into between David Stapleton, solely in his capacity as the receiver ("Receiver") for SiliconSage Builders, LLC, and its subsidiaries and affiliates (together, the “Receivership Entities”), and Amit Khetan, an individual (“Investor”). The Receiver and the Investor shall be collectively referred to as “Parties” or individually as “Party.

### I.

#### RECITAL

WHEREAS, Investor invested \$100,000 with the Receivership Entities, and received back \$196,016.60 on account of those investments.

WHEREAS, the Securities and Exchange Commission (“SEC”) filed an action in the United States District Court (Northern District of California) (the "Court") entitled SEC. v. SiliconSage Builders, LLC, Et. Al., Case number 3:20-CV-09247 (“SEC Action”), wherein it sought the appointment of a receiver to take control of the Receivership Entities and their assets and property.

WHEREAS, on February 10, 2021, the Court issued an order granting the SEC’s Motion for appointment of a receiver and appointed the Receiver (“Order”). The Receiver obtained an order pooling the assets and liabilities of the Receivership Entities. Investors have filed claims, and the Receiver has determined that investors will not be paid in full.

WHEREAS, pursuant to applicable case law, the Receiver has asserted that the Investor is a winning investor who is obligated to return the funds that he received in excess of his investment (the "Dispute").

WHEREAS, the Receiver and the Investor have agreed to settle the Dispute.

NOW, THEREFORE, IT IS AGREED:

### II.

#### AGREEMENT

1. By the later of November 30, 2023, or seven business days after the Effective Date, as defined below, Investor shall pay the Receiver \$76,813.24 (the “Settlement Payment”). Pending the occurrence of the Effective Date, the Investor agrees that any applicable statute of limitations that would otherwise run shall be tolled until the date that is sixty days after this Agreement is void and of no

further force or effect.

2. The Parties will release each other as set forth below:

(a) Except for the rights and obligations arising from the Settlement Agreement, upon execution of the Settlement Agreement, the Investor releases and forever discharges the Receiver and the Receivership Entities and their present and former agents, professionals, employees and representatives (together, the "Receiver Released Parties"), of and from any and all claims of any nature whatsoever, whether or not now known or suspected or asserted which the Investor ever had, now has or later may have or claim to have against the Receiver Released Parties.

(b) Except for the rights and obligations arising from this Settlement Agreement, upon his receipt of the Settlement Payment in good and sufficient funds, the Receiver and the Receivership Entities release and forever discharge the Investor from any and all claims of any nature whatsoever, whether or not now known or suspected or asserted which the Receivership Entities ever had, now have, or later may have or claim to have against the Investor related to the Dispute.

(c) Except for the rights and obligations arising from this Settlement Agreement and specifically reserving and preserving the rights, duties and obligations stated herein, the Parties expressly waive the benefits of §1542 of the *Civil Code of California* which provides:

**"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

3. Court Approval. Promptly upon the execution of this Settlement Agreement by the Parties, the Receiver will file a motion with the Court for approval of the Settlement Agreement. This Settlement Agreement is subject to the requirement of Court approval. If Court approval is denied, then this Settlement Agreement shall be of no further force or effect. The effective date of this Settlement Agreement will be the date that the Court enters the order approving the Settlement Agreement ("Effective Date").

4. Further Assurances. The Parties shall execute any and all documents and perform any and all acts reasonably necessary, incidental, or appropriate to effect the transactions contemplated by this Agreement.

5. Severability. Should any claim, provision, covenant or condition of this Settlement

Agreement be held by a court of competent jurisdiction to be invalid, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

6. Controlling Law and Jurisdiction. This Settlement Agreement shall be construed in accordance with the laws of the State of California and the Court shall have sole and exclusive jurisdiction over the resolution of any dispute arising under this Settlement Agreement.

7. Capacity of the Receiver. The Receiver is entering into the Settlement Agreement solely in his capacity as the Receiver for the Receivership Entities and not on behalf of himself individually. The Receiver shall have no personal liability for any breach of the Settlement Agreement.


8. Attorney's Fees. Should any Party hereto bring a legal action against any other Party hereto to enforce any term or condition of this Settlement Agreement, the prevailing Party shall be entitled to recovery of its attorneys' fees for either bringing or defending the legal action.

9. Integration. This Settlement Agreement constitutes the entire agreement between the Parties relative to the subject matter hereof. No covenants, agreements, representations or warranties of any kind or whatsoever have been made by any Party hereto, other than as specifically set forth in this agreement. All prior discussions and negotiations have been and are merged and integrated into this Settlement Agreement and are superseded by this Settlement Agreement.

10. Counterparts. This Settlement Agreement may be executed in two counterparts, each of which shall be an original, but each counterpart shall constitute one in the same instrument.

SILICONSAGE BUILDERS, LLC, and its affiliates and subsidiaries

DATED: Oct. 25, 2023

By:   
David Stapleton, solely in his capacity as the Receiver for SiliconSage Builders, LLC, and its affiliates and subsidiaries

DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Amit Khetan

Agreement be held by a court of competent jurisdiction to be invalid, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

6. Controlling Law and Jurisdiction. This Settlement Agreement shall be construed in accordance with the laws of the State of California and the Court shall have sole and exclusive jurisdiction over the resolution of any dispute arising under this Settlement Agreement.

7. Capacity of the Receiver. The Receiver is entering into the Settlement Agreement solely in his capacity as the Receiver for the Receivership Entities and not on behalf of himself individually. The Receiver shall have no personal liability for any breach of the Settlement Agreement.

8. Attorney's Fees. Should any Party hereto bring a legal action against any other Party hereto to enforce any term or condition of this Settlement Agreement, the prevailing Party shall be entitled to recovery of its attorneys' fees for either bringing or defending the legal action.

9. Integration. This Settlement Agreement constitutes the entire agreement between the Parties relative to the subject matter hereof. No covenants, agreements, representations or warranties of any kind or whatsoever have been made by any Party hereto, other than as specifically set forth in this agreement. All prior discussions and negotiations have been and are merged and integrated into this Settlement Agreement and are superseded by this Settlement Agreement.

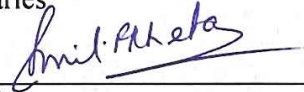
10. Counterparts. This Settlement Agreement may be executed in two counterparts, each of which shall be an original, but each counterpart shall constitute one in the same instrument.

SILICONSAGE BUILDERS, LLC, and its affiliates and subsidiaries

DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
David Stapleton, solely in his capacity as the Receiver for SiliconSage Builders, LLC, and its affiliates and subsidiaries.

DATED: 15 September, 2023

By:   
Amit Khetan

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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 **10/27/2023**, I served true copies of the following document(s) described **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER AUTHORIZING THE RECEIVER TO ENTER INTO A SETTLEMENT AGREEMENT WITH AMIT KHETAN; DECLARATION OF DAVID STAPLETON IN SUPPORT** 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 **10/27/2023**, 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 27, 2023, at Costa Mesa, California.

*/s/ Lynnette Garrett*  
\_\_\_\_\_  
Lynnette Garrett

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## SERVICE LIST

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