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10 Attorneys for Defendants
SILICON SAGE BUILDERS, LLC and SANJEEV
11 ACHARYA

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 vs.

19 SILICON SAGE BUILDERS, LLC aka
20 SILICON SAGE BUILDERS and
SANJEEV ACHARYA,

21 Defendants.
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CASE NO. 3:20-CV-09247-SI

**DEFENDANTS' CONSENT TO
PLAINTIFF'S ADMINISTRATIVE
MOTION TO EXCEED PAGE LIMIT
AND OPPOSITION TO PLAINTIFF'S
ADMINISTRATIVE MOTION TO
SHORTEN TIME TO HEAR MOTION
FOR PRELIMINARY INJUNCTION AND
FOR APPOINTMENT OF RECEIVER**

McDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
LOS ANGELES

1 Pursuant to Civil Local Rule 7-11, Defendants Silicon Sage Builders, LLC
 2 (“SiliconSage”) and Sanjeev Acharya (collectively “Defendants”) file their response to Plaintiff
 3 Securities and Exchange Commission’s (“SEC”) administrative motion (“Administrative
 4 Motion”) (a) to exceed the page limit specified by Civil Local Rule 7-4(b) for its Motion for
 5 Preliminary Injunction and for Appointment of Receiver (“Motion”) and (b) to shorten the time in
 6 which to hear the Motion. Defendants do not oppose the SEC’s request to extend the page limit
 7 for its Motion and the opposition. However, given the complexity cited by the SEC and the
 8 absence of immediate harm to investors, Defendants oppose the SEC’s motion to accelerate the
 9 time to hear the Motion.

10 Both parties agree that this case involves complex issues of fact and law. (SEC Admin.
 11 Motion Br. 1.) Notwithstanding this complexity, the SEC chose to rush into the courthouse only
 12 two months after opening its formal investigation, without any attempt to negotiate a potential
 13 resolution. Should the Court provide additional time before the Motion hearing, the Defendants
 14 intend to negotiate a consensual resolution of the Motion. Defendants were and are prepared to
 15 work with the SEC to protect investor interests. If that negotiated resolution fails to materialize,
 16 Defendants request additional time to respond adequately to the SEC’s Motion. The SEC filed its
 17 Complaint and Motion during the holidays and a pandemic, when it is difficult to obtain relevant
 18 information from supporting witnesses and other sources. Further, the SEC’s proposed hearing
 19 schedule would accelerate an already-difficult briefing schedule. Given the complexity of the
 20 SEC’s allegations, which stretch back at least four years and across numerous projects and
 21 entities (Compl. ¶ 3, 10-18), Defendants require additional time to respond.

22 The SEC overstates the urgency of its Motion and the hearing schedule. As is evident to
 23 investors, Defendants currently face a liquidity crisis caused in part and worsened by a global
 24 pandemic. (*See* Compl. ¶ 115.) In recent months, SiliconSage raised only a limited amount of
 25 funds from individual investors who were informed of these struggles.¹ According to the SEC’s
 26

27 ¹ As the SEC and investors understand, SiliconSage separately attempted to negotiate refinancing
 28 and other financial workouts with existing lenders and sophisticated institutional investors.

1 own Complaint, Mr. Acharya began warning investors of a liquidity problem on March 18, 2020
 2 (Compl. ¶ 115) and comprehensively “acknowledged [the] financial problems” by September 9,
 3 2020 (Compl. ¶ 145).² During this time period, SiliconSage raised approximately \$4 million in
 4 incoming funds (Tsai Decl. ¶ 3) from individual investors, a fraction of the \$17 million figure
 5 provided by the SEC and just 3% of the \$119 million allegedly raised since August 2016 (Compl.
 6 ¶¶ 3, 126). Although other existing investors were asked to transfer interests in the form of
 7 rollovers—on terms openly extended to all investors (*e.g.*, Compl. ¶ 129-30)—SiliconSage did
 8 not acquire new investor funds on the scale alleged by the SEC. Since the more comprehensive
 9 disclosures by Mr. Acharya to existing investors on September 9, 2020 (Compl. ¶ 145),
 10 SiliconSage raised less than \$400,000 from two investors (Tsai Decl. ¶ 4). Furthermore, months
 11 *before* the SEC investigation began, SiliconSage voluntarily closed SiliconSage Bridge Fund,
 12 LLC to new investments and began working to redeem investors. (Compl. ¶ 146; SEC Motion
 13 Br. 16.) After the SEC filed its Complaint, SiliconSage raised no funds from individual investors
 14 (Acharya Decl. ¶ 3) and, pending the resolution of the SEC’s Motion, commits not to raise such
 15 funds from individual investors absent the agreement of the SEC. (*Id.* ¶ 4.) To alleviate the
 16 SEC’s concerns, SiliconSage also agrees to halt any rollover activity.³ (*Id.* ¶ 5.)

17 The SEC further overstates and, in fact, increases the immediate risk to investors with the
 18 precipitous filing of the lawsuit. In its Complaint, the SEC provides no evidence of actual
 19 misappropriation and acknowledges that Defendants hold almost no funds. (Compl. ¶¶ 3, 47.)
 20 Alongside the investors, the Defendants hold interests in immobile real property, much of which
 21 is secured by construction and land debt. (Compl. ¶¶ 19.) The SEC’s proposed schedule presents
 22 substantial risk to the interests of the individual investors, which can be best protected by
 23

24 ² The SEC alleges without providing proper context that investor calls on August 21, 2020 and
 25 September 9, 2020 were “recorded,” perhaps to suggest some form of criminal investigation. In
 26 fact, SiliconSage recorded these investors calls to make the content available to investors who
 were unable to attend the live meeting.

27 ³ In suspending fundraising from individual investors and rollover activity, Defendants do not
 28 intend to convey that such actions were problematic or unlawful.

1 thoughtful management of ongoing construction projects hobbled by the pandemic. These
2 interests, which recover after the secured construction debt, would be severely compromised by
3 any fire sale triggered by the SEC's overly aggressive actions.

4 Finally, the SEC understates the harm to Defendants of a rush to judgment. After two
5 months of investigation, and without any direct allegation of misappropriation in its Complaint,
6 the SEC proposes nothing less than the dissolution of a business built over nine years. (Compl.
7 ¶ 10.) The SEC further seeks to install a receiver and to freeze the assets of an individual and a
8 business. (Compl. ¶ 5.) Compressing the already-accelerated timetable further ignores the
9 practical impact of precipitous action that will be to the detriment of the investors.

10 The SEC's request to accelerate the Motion hearing should be denied. As the SEC
11 contends, this matter is complex, and Defendants request additional time to negotiate a resolution
12 and to respond to the SEC's Motion. In the meantime, investors have been alerted to the business
13 struggles, and Defendants have and will continue to suspend the already very limited fundraising
14 that occurred in the preceding few months. Additional time will allow proper resolution and
15 consideration of a Motion that has serious impact on the interests of both investors and the
16 Defendants.

17 Defendants therefore request the the SEC Motion be denied to the extent it seeks to
18 shorten the time to the hearing. Defendants do not oppose a five-page expansion of the page
19 limits as requested by the SEC, provided that Defendants also are permitted an additional five
20 pages for their Opposition to the SEC's Motion for Preliminary Injunction.

21 Dated: December 28, 2020

McDERMOTT WILL & EMERY LLP

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24 By: /s/ Michael A. Piazza

MICHAEL A. PIAZZA
Attorneys for Defendants
SILICON SAGE BUILDERS LLC and
SANJEEV ACHARYA

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CASE NO. 3:20-CV-09247-SI

**DECLARATION OF SANJEEV ACHARYA
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
ADMINISTRATIVE MOTION TO SHORT
TIME TO HEAR MOTION FOR
PRELIMINARY INJUNCTION AND FOR
APPOINTMENT OF RECEIVER**

MCDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
LOS ANGELES

1 I, Sanjeev Acharya, declare

2 1. I am over the age of 18, and I make this Declaration in support of Defendants
3 Silicon Sage Builders, LLC (“Silicon Sage”) and Sanjeev Acharya’s opposition to the Securities
4 and Exchange Commission’s Administrative Motion to Shorten Time to Hear Motion for
5 Preliminary Injunction and Appointment of Receiver.

6 2. I am the current President and CEO of SiliconSage.

7 3. After the SEC filed its Complaint on December 21, 2020, SiliconSage raised no
8 funds from individual investors.

9 4. Pending the resolution of the SEC’s motion for preliminary injunction,
10 SiliconSage commits not to raise any funds from individual investors absent the consent of the
11 SEC.

12 5. Pending the resolution of the SEC’s motion for preliminary injunction,
13 SiliconSage will not conduct any rollover activity.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct and that this Declaration was executed on December 28, 2020 in
16 Sunnyvale, California.

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18 By: 
19 SANJEEV ACHARYA

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CASE NO. 3:20-CV-09247-SI

**DECLARATION OF POLLY TSAI IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
ADMINISTRATIVE MOTION TO SHORT
TIME TO HEAR MOTION FOR
PRELIMINARY INJUNCTION AND FOR
APPOINTMENT OF RECEIVER**

McDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
LOS ANGELES

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ATTORNEYS AT LAW
LOS ANGELES

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I, Polly Tsai, declare

1. I am over the age of 18, and I make this Declaration in support of Defendants Silicon Sage Builders, LLC (“Silicon Sage”) and Sanjeev Acharya’s opposition to the Securities and Exchange Commission’s Administrative Motion to Shorten Time to Hear Motion for Preliminary Injunction and Appointment of Receiver.

2. Since approximately February 2018, I served as Controller of SiliconSage. For purposes of issuing this declaration, I reviewed bank account information for SiliconSage and its affiliates.

3. Based on that review, from March 18, 2020 to September 9, 2020, SiliconSage raised approximately \$4 million in funds from individual investors.

4. Based on that review, since September 9, 2020, SiliconSage raised less than \$400,000 from two investors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on December 28, 2020 in Sunnyvale, California.

By: **Polly Tsai** Digitally signed by Polly Tsai
DN: cn=Polly Tsai, o, ou,
email=Polly@siliconsage.com, c=US
Date: 2020.12.28 15:54:59 -08'00'
POLLY TSAI