

RAINES FELDMAN LITTRELL LLP

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Receiver

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JUSTIN ROBERT KING AND
ELEVATE INVESTMENTS, LLC,

Defendants.

Case No.: SACV20-02398-
JVS(DFMx)

**NOTICE OF MOTION AND
MOTION OF RECEIVER TO
ALLOW CLAIMS AND TO
MAKE AN INTERIM
DISTRIBUTION**

**[MEMORANDUM OF POINTS
AND AUTHORITIES AND
DECLARATION OF JEFFREY E.
BRANDLIN IN SUPPORT FILED
CONCURRENTLY]**

Date: September 23, 2024

Time: 1:30 p.m.

Dept: 10C, 411 W. Fourth St.
Santa Ana, CA 92701

**TO THE HONORABLE JAMES V. SELNA, UNITED STATES DISTRICT
JUDGE, AND ALL INVESTORS AND CREDITORS:**

PLEASE TAKE NOTICE that on September 16, 2024, at 1:30 p.m., the Court is scheduled to hold a hearing on the *Motion of Receiver to Allow Claims and to Make an Interim Distribution* (the “Motion”). In the Motion, the Receiver is seeking entry of an order allowing claims in the amounts set forth on Exhibit “3”

1 to the accompanying *Memorandum of Points and Authorities* (the
2 “Memorandum”). Attendance at the hearing by investors is not required unless
3 they file a written opposition to the Motion.

4 The claims bar date in this case was April 11, 2023. The Receiver
5 received a total of 46 claims from investors. The Receiver has determined that 4
6 of the 46 investors’ claims were the same person or a related entity, resulting in
7 42 net claims. The Receiver recommends allowance of claims totaling
8 \$8,263,787 after reviewing and resolving claim discrepancies. The claim
9 number(s) for each investor is on the letter that accompanies the service copy of
10 this Motion. Names are not included on the exhibit in order to protect investor
11 privacy. The Receiver is seeking to distribute \$1.4 million of funds on hand
12 using the rising tide distribution methodology, which takes into account
13 distributions received pre-receivership so that all investors receive the same
14 recovery. Using this method, investors will each receive at least 19.01% of their
15 investment back.

16 Specifically, the Receiver is seeking entry of an order:

17 (1) Allowing the claims identified on Exhibit “3” to the Memorandum
18 as claims against the Receivership Estate in the amounts set forth on Exhibit “3”;

19 (2) Imposing a constructive trust against the assets of the Receivership
20 Estate for the sole benefit of investors, with any creditor claims subordinated to
21 the investor claims identified on Exhibit “3”;

22 (3) For purposes of calculating the allowed amount of claims,
23 authorizing the consolidated treatment of (i) investments and distributions made
24 by or to two individuals and companies owned by those individuals and (ii) an
25 individual and her revocable trust;

(4) Authorizing the Receiver to make a distribution of \$1.4 million to the investor claimants identified on Exhibit “3” utilizing the rising tide methodology; and

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

FOR FURTHER INFORMATION, please see the concurrently-filed *Memorandum* and supporting declaration that is being served concurrently with this Motion. It is also available on the website for this receivership, which is at <https://www.donlinrecano.com/Clients/ei/Index>.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7-9, any opposing party shall, not later than twenty-one (21) days before the date scheduled for the hearing, serve upon all other parties and file with the Clerk either (a) the evidence upon which the opposing party will rely in opposition to the Application(s) and a brief but complete memorandum which contains a statement of all the reasons in opposition thereto and the points and authorities upon which the opposing party will rely, or (b) a written statement that the party will not oppose the Applications. Evidence presented in all opposing papers shall comply with the requirements of Local Rules 7-6, 7-7 and 7-8. If you fail to file and serve a written opposition by the above date, the Court may grant the requested relief without further notice.

Respectfully submitted,

Dated: August 20, 2024

RAINES FELDMAN LITRELL LLP

By: /s/ Kyra E. Andrassy

Kyra E. Andrassy
Attorneys for Jeffrey E. Brandlin,
Receiver

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action; I am employed by Raines Feldman Littrell LLP and its business address is 3200 Park Center Drive, Suite 250, Costa Mesa, California 92626.

On August 20, 2024, I served the following document(s) described as

NOTICE OF MOTION AND MOTION OF RECEIVER TO ALLOW CLAIMS AND TO MAKE AN INTERIM DISTRIBUTION

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

SEE ATTACHED SERVICE LIST

☒ **BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”):** Pursuant to United States District Court, Central District of California, Local Civil Rule 5-3, the foregoing document will be served by the court via NEF and hyperlinked to the document. On August 20, 2024, 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.

☐ **BY MAIL:** I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of Raines Feldman Littrell LLP, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the practice of Raines Feldman Littrell LLP for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.

☐ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in the attached service list.

☐ **BY OVERNIGHT DELIVERY:** I placed said documents in envelope(s) for collection following ordinary business practices, at the business offices of Raines Feldman Littrell LLP, and addressed as shown on the attached service list, for collection and delivery to a courier authorized by _____ to receive said documents, with delivery fees provided for. I am readily familiar with the practices of Raines Feldman Littrell LLP for collection and processing of documents for overnight delivery, and said envelope(s) will be deposited for receipt by _____ on said date in the ordinary course of business.

☐ **BY FACSIMILE:** I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated on the attached service list.

☐ **BY PERSONAL SERVICE:** I delivered such envelope(s) by hand to the offices of the addressee(s) in the attached service list.

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

1 ☒ (Federal) I declare that I am employed in the office of a member of the bar of this
2 court at whose direction the service was made. I declare under penalty of
3 perjury that the above is true and correct.

4 Executed August 20, 2024 at Costa Mesa, California.

4 Ja’Nita Fisher	_____	_____	/s/ Ja’Nita Fisher
5 Type or Print Name			Signature

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SERVICE LIST

BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”):

- **Kyra E Andrassy**
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BY MAIL:

Brandlin/Elevate: List of Creditors

State of California Employment Development Department PO Box 826880 Sacramento CA 94208-0001	Franchise Tax Board Chief Counsel c/o General Counsel Section PO Box 1720 MS:A-260 Rancho Cordova, CA 95741- 1720	Internal Revenue Service PO Box 7346 Philadelphia, PA 19101-7346
Franchise Tax Board Chief Counsel PO Box 2229 Sacramento CA 95812-2229	Franchise Tax Board PO Box 942857 Sacramento CA 94257-0500	Employment Development Department Legal Office 800 Capital Mall MIC 53 Sacramento CA 95814
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JUSTIN ROBERT KING AND
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Defendants.

Case No.: SACV20-02398-
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**[PROPOSED] ORDER
GRANTING MOTION OF
RECEIVER TO ALLOW
CLAIMS AND TO MAKE AN
INTERIM DISTRIBUTION**

Date: September 23, 2024
Time: 1:30 p.m.
Dept: 10C, 411 W. Fourth St.
Santa Ana, CA 92701

At the above date and time, the Court held a hearing on the *Motion of Receiver to Allow Claims and to Make an Interim Distribution* (the “Motion”) filed by Jeffrey E. Brandlin, the receiver (“Receiver”) for Elevate Investments, LLC. Appearances were as noted on the record. For the reasons set forth in the Motion and the Court having found that notice of the Motion was proper and that cause exists to grant the relief sought in the Motion,

IT IS ORDERED AS FOLLOWS:

(1) The Motion is granted;

1 (2) The claims identified on Exhibit “3” to the Motion are allowed as
2 claims against the Receivership Estate in the amounts set forth on Exhibit “3”;

3 (3) A constructive trust is imposed against the assets of the
4 Receivership Estate for the sole benefit of investors, with any creditor claims
5 subordinated to the investor claims identified on Exhibit “3”;

6 (4) For purposes of calculating the allowed amount of claims, the Court
7 authorizes the consolidated treatment of claims 8, 11, and 18 as reflected on
8 Exhibit “3” because they are (i) investments and distributions made by or to two
9 individuals and companies owned by those individuals or (ii) an individual and
10 her revocable trust; and

11 (5) The Receiver is authorized to make a distribution of \$1.4 million to
12 the investor claimants identified on Exhibit “3” utilizing the rising tide
13 methodology.

14 **IT IS SO ORDERED.**

15 Dated: _____

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17 James V. Selna, United States District
18 Judge
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