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Attorneys for Jeffrey E. Brandlin,
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,

and

SHANNON LEIGH KING,

Relief Defendant.

Case No. 8:20-cv-02398-JVS-DFM

**MOTION OF JEFFREY E.
BRANDLIN, PERMANENT
RECEIVER, FOR AUTHORITY TO
COMMENCE LITIGATION TO
RECOVER FRAUDULENT
TRANSFERS AND EMPLOY
ERVIN COHEN & JESSUP LLP AS
SPECIAL COUNSEL, EFFECTIVE
NOVEMBER 15, 2022;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS
OF JEFFREY E. BRANDLIN AND
BYRON Z. MOLDO**

[Notice of Motion submitted
concurrently herewith]

DATE: March 13, 2023

TIME: 1:30 p.m.

CTRM: 10C

JUDGE: Hon. James V. Selna

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MOTION

Jeffrey E. Brandlin, the Permanent Receiver (“Receiver”) for Elevate Investments LLC and its subsidiaries and affiliates (together, “Elevate”), hereby moves the Court for an order authorizing the Receiver to commence litigation to recover fraudulent transfers made to certain individuals and/or entities that received funds from Elevate and Elevate did not receive adequate consideration in exchange therefor, and to employ Ervin Cohen & Jessup LLP as special counsel, effective November 15, 2022.

This Motion requests permission for the Receiver to attempt to pursue fraudulent transfer claims against individuals or entities that received funds from Elevate and Elevate did not receive adequate consideration in exchange therefor. The Receiver believes these funds are recoverable either as actual or constructive fraudulent transfers.

The Receiver believes that the potential amount to be recovered by pursuing these claims is as much as \$1,000,000.00. If the Receiver can settle or recover the funds without commencing litigation, he will attempt to do so. However, the Receiver believes it is appropriate to have authority to commence litigation to recover the funds owed if settlements cannot be achieved.

If litigation is commenced, the Receiver would prefer to bring suit before this Court. This Court will have jurisdiction over any actions filed by the Receiver pursuant to 28 U.S.C. § 1367 since the lawsuits will be ancillary to the receivership pending before this Court. Donell v. Kowell, 533 F.3d 762, 769 (9th Cir. 2008).

The Receiver also seeks this Court’s authority to make an initial settlement offer to the individuals and entities that received alleged fraudulent transfers (hereinafter the “Recipients”) prior to filing suit against

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1 them, in the hope that some of the Recipients will agree to return the
 2 transfers they received without the necessity of the Receiver commencing
 3 suit. The Receiver, therefore, requests this Court's authority to make an
 4 initial settlement offer to the Recipients in an amount of not less than 85% of
 5 the demand made on each individual or entity.

6 The Receiver also seeks authority to settle with the Recipients once
 7 litigation is commenced, without subsequent court approval in the amount of
 8 \$100,000 or less.

9 The Receiver conferred with the Securities and Exchange Commission
 10 ("SEC") regarding the relief sought in this Motion and is informed that it has
 11 no objection. The Receiver agreed to keep the SEC apprised as to the
 12 status of his efforts to pursue these claims.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **INTRODUCTION**

16 On January 19, 2021, this Court issued its Preliminary Injunction and
 17 Appointment of a Permanent Receiver ("Order"). A copy of the Order is
 18 attached hereto as Exhibit "A." The Order granted Plaintiff's motion for a
 19 preliminary injunction and appointed Jeffrey E. Brandlin as Receiver.
 20

21 The Order provides, in part, that Jeffrey Brandlin was appointed as
 22 Permanent Receiver for defendant Elevate and its subsidiaries and affiliates,
 23 with full powers of an equity receiver, including, but not limited to, full power
 24 over all funds, assets, collateral, premises (whether owned, leased,
 25 occupied, or otherwise controlled), choses in action, books, records, papers
 26 and other property belonging to, being managed by or in the possession of
 27 or control of Defendant Elevate, and the Receiver was immediately
 28

1 authorized, empowered and directed to perform the duties set forth in
2 section IX of the Order.

3 Upon his appointment, the Receiver and his general counsel went to
4 the office location of Elevate, located at 501 N. El Camino Real, Suite 226,
5 San Clemente, CA. The Receiver was able to obtain some information from
6 Justin King (“J. King”), including usernames and passwords for the computer
7 and iPad, the different web-based programs used by Elevate, and Elevate’s
8 Gmail account. The Receiver and his counsel also changed the passwords
9 in order to ensure that J. King was no longer able to access the data or the
10 accounts. The Receiver had the computer images and reviewed the data
11 that was retrieved in order to identify investors, creditors, and potential
12 assets, and to understand how Elevate communicated with investors and
13 solicited new investments. The Receiver obtained a preliminary list of
14 potential investors and provided them with notice of his appointment, and
15 directed them to the website that the Receiver established in order to
16 communicate with investors. The Receiver changed the lock to the office
17 and redirected Elevate’s mail to the Receiver’s office.

18 The Court’s December 28, 2020 temporary restraining order identified
19 four accounts in the name of Elevate and its affiliates that were located at
20 two different financial institutions. Concurrent with gaining control of the
21 office, the Receiver provided notice to the financial institutions of his
22 appointment and the order freezing the accounts. The Receiver also
23 requested all documents for those accounts in order to prepare a forensic
24 accounting to determine the source of incoming funds to Elevate, and all
25 disbursements.

26 The Receiver has completed his forensic accounting. Elevate did not
27 maintain accounting records, and therefore, the Receiver reconstructed
28 Elevate’s books and records from bank records that he obtained.

1 Based on the information contained in the forensic accounting, and
2 other information available to him, the Receiver believes he possesses
3 claims that can be pursued to recover money for the receivership estate and
4 defrauded investors.

5 Specifically, the Receiver believes it is appropriate to attempt to
6 recover fraudulent transfer claims against individuals or entities that received
7 funds from Elevate and Elevate did not receive adequate consideration in
8 exchange. The Receiver has obtained documents through subpoenas that
9 he issued to a number of credit card companies in order to gather
10 information to support these claims and is now prepared to pursue the
11 claims. The Receiver believes these funds are recoverable either as actual
12 or constructive fraudulent transfers. The Receiver believes that the potential
13 amount to be recovered by pursuing these claims is as much as
14 \$1,000,000.00. If the Receiver can settle or recover the funds without
15 commencing litigation he will attempt to do so. However, the Receiver
16 believes it is appropriate to have authority to commence litigation to recover
17 the funds owed if settlements cannot be achieved.

18 Based on his investigation, the Receiver believes that Elevate and
19 Defendant J. King engaged in Ponzi-like activity. For example, substantial
20 funds that were paid by investors were used by Elevate for the benefit of
21 Defendant J. King, his family, and other third parties. The Receiver believes
22 that these payments are recoverable as fraudulent transfers under California
23 law, specifically the Uniform Voidable Transaction Act (California Code of
24 Civil Procedure § 3439 et seq.) and established Ninth Circuit law.

25 Jurisdiction and venue for the Receiver's proposed lawsuits are
26 properly before this Court because the Receiver's proposed lawsuits will be
27 ancillary to this receivership action. 28 U.S.C. § 1367; Donell v. Kowell,
28 supra. at 769; Haile v. Henderson Nat'l Bank, 657 F.2d 816, 822 (6th Cir.

1 1981), cert. denied, 455 U.S. 949 (1982); Scholes v. Lehmann, 56 F.3d
 2 1750, 1753 (7th Cir.), cert. denied, 516 U.S. 1028 (1995).

3 In an attempt to conserve costs, the Receiver also seeks authority
 4 from this Court to make an initial offer to settle the Receiver's proposed
 5 litigation before filing suit. The Receiver proposes to offer to settle with any
 6 potential defendant for not less than 85% of the demand made on each
 7 individual or entity. The Receiver also requests authority to settle with the
 8 proposed defendants, without additional Court approval, if settlement cannot
 9 be reached for the amount of the initial settlement offer. The Receiver seeks
 10 authority to settle with the Recipients once litigation is commenced, without
 11 subsequent court approval in the amount of \$100,000 or less.

12 II.

13 LEAVE IS NECESSARY FOR THE 14 RECEIVER TO COMMENCE THE PROPOSED LITIGATION

15 Because the Receiver is an officer or representative of the Court and
 16 acts, in effect, on the Court's behalf, it is general receivership law that before
 17 a receiver commences major litigation a receiver is required to obtain court
 18 approval to do so. "A receiver should obtain leave to sue not only on
 19 obligations accruing to him and resulting from his administration of the
 20 estate but also on obligations accruing to the defendant." 2 Clark, Law of
 21 Receivers § 583 (3rd ed. 1959) (hereinafter "Clark"). In this case, the Order
 22 authorizes, empowers, and directs the Receiver:
 23

24 to choose, engage, and employ attorneys, accountants,
 25 appraisers, and other independent contractors and
 26 technical specialists, as the receiver deems advisable
 27 or necessary in the performance of duties and
 28 responsibilities under the authority granted by this

1 Order;...[and]

2 to investigate and, where appropriate, to institute,
3 pursue, and prosecute all claims and causes of action
4 of whatever kind and nature that may now or hereafter
5 exist as a result of the activities of present or past
6 employees or agents of Defendant Elevate and its
7 subsidiaries and affiliates;

8 Although this authority exists, receivership law still suggests that
9 specific authority be obtained when commencing major litigation, as is
10 contemplated by the Receiver here. "Frequently the order appointing a
11 receiver sets out in length the powers and duties of the receiver In such
12 cases, the receiver is, by the order of appointment, given the power to bring
13 certain suits for the purpose of collecting assets and for other purposes.
14 Even in such cases where the suit to be brought by the receiver is one of
15 any consequence and was not strictly contemplated by the order of
16 appointment, the receiver should have a special order for bringing such a
17 suit." 2, Clark § 583(b).

18 The fraudulent transfer litigation proposed by the Receiver is not
19 unique or unusual in cases such as this. In the bankruptcy context, trustees
20 have often pursued fraudulent transfer claims under 11 U.S.C. § 548, as well
21 as on alternative theories under 11 U.S.C. § 544(b), which, in effect,
22 incorporates relevant state fraudulent transfer statutes. See, for example, In
23 re Agricultural Research & Technology Group, Inc., 916 F.2d 528 (9th Cir.
24 1990), where the court discusses the Hawaii fraudulent transfer statute used
25 by the trustee, and where the Court found that the trustee could recover
26 under that theory.¹ The Ninth Circuit confirmed that receivers can pursue

27 ¹ The Ninth Circuit noted that where one sues under state fraudulent transfer laws,
28 bankruptcy cases discussing the recovery of fraudulent transfers under 11 U.S.C. § 548
"are persuasive authority due to the similarity of laws in this area." Id. at 534.

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1 similar actions. Donell v. Kowell, supra. The basic theory of the Receiver's
 2 proposed litigation is that he is entitled to recover the funds Elevate
 3 transferred to certain individuals or entities, for which transfers Elevate did
 4 not receive adequate consideration in exchange therefor pursuant to
 5 theories of actual and constructive fraud under the California Civil Code.

6 Specifically, the Receiver believes that he will be able to recover funds
 7 Elevate transferred under theories of constructive fraud pursuant to
 8 California Civil Code §§ 3439.04(a)(2) and 3439.05 which provide that:

9
 10 (a) A transfer made or obligation incurred by a debtor is voidable as to
 11 a creditor, whether the creditor's claim arose before or after the
 12 transfer was made or the obligation was incurred, if the debtor made
 the transfer or incurred the obligation as follows:

13 (2) Without receiving a reasonably equivalent value in exchange for
 14 the transfer or obligation, and the debtor either:

15 (A) Was engaged or was about to engage in a business or a
 16 transaction for which the remaining assets of the debtor were
 unreasonably small in relation to the business or transaction.

17 (B) Intended to incur, or believed or reasonably should have believed
 18 that the debtor would incur, debts beyond the debtor's ability to pay as
 19 they became due.

20 Cal. Civ. Code § 3439.04(a)(2).

21 (a) A transfer made or obligation incurred by a debtor is voidable as to
 22 a creditor whose claim arose before the transfer was made or the
 23 obligation was incurred if the debtor made the transfer or incurred the
 24 obligation without receiving a reasonably equivalent value in exchange
 for the transfer or obligation and the debtor was insolvent at that time
 25 or the debtor became insolvent as a result of the transfer or obligation.

26 Cal. Civ. Code § 3439.05.

1 The Receiver believes he will be able to satisfy the elements of
2 constructive fraud causes of action because Elevate made transfers to
3 certain individuals or entities without receiving any reasonably equivalent
4 value in exchange. Based on the Receiver's forensic accounting of what
5 money came into Elevate and where it went, Elevate made payments to
6 certain individuals or entities that appear to be personal expenses of the
7 principals or payments that otherwise did not benefit Elevate or its investors.
8 Additionally, under California Civil Code § 3439.02(b), a debtor that is
9 generally not paying its debts as they become due, other than those which
10 are the subject of a bona fide dispute, is presumed to be insolvent. Here,
11 the Receiver believes he will be able to show that at the time of the alleged
12 fraudulent transfers, Elevate was engaged in securities fraud, and therefore,
13 presumed insolvent. *See Cunningham v. Brown*, 265 U.S. 1, 8 (1924); *see*
14 *also Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006).

15 Moreover, because Defendant J. King's trading resulted in substantial
16 losses year after year for Elevate's clients, the Receiver also believes that
17 he can show that Elevate was operating its business with an unreasonably
18 small amount of capital and intended to incur, or reasonably should have
19 believed it would incur, debts beyond its ability to pay as they became due.
20 Defendants J. King and Elevate were also making materially false and
21 misleading statements to investors. *See In re Mark Benskin & Co., Inc.*, 161
22 B.R. 644, 650 (Bankr. W.D. Tenn. 1993) ("[T]he fact that the debtor operated
23 primarily if not exclusively on fraudulently obtained funds establishes that the
24 debtor had little if any legitimate operating capital. It would seem axiomatic
25 that the debtor was operating its business with unreasonably small capital.").

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1 Additionally, the Receiver also believes that he will be able to recover
2 funds Elevate transferred under theories of actual fraud pursuant to
3 California Civil Code § 3439.04(a)(1) which provides that:

4 (a) A transfer made or obligation incurred by a debtor is voidable as to
5 a creditor, whether the creditor's claim arose before or after the
6 transfer was made or the obligation was incurred, if the debtor made
7 the transfer or incurred the obligation as follows:

8 (1) With actual intent to hinder, delay, or defraud any creditor of the
9 debtor.

10 Cal. Civ. Code § 3439.04(a)(1).

11 The Receiver believes he will be able to show that certain transfers
12 made by Elevate for the benefit of Defendant J. King, his family, and other
13 third parties carry badges of fraud which would support a finding of actual
14 intent – *i.e.* whether the debtor removed or concealed assets; whether the
15 value of the consideration received by the debtor was reasonably equivalent
16 to the value of the asset transferred; whether the transfer was disclosed or
17 concealed; whether the debtor was insolvent or became insolvent shortly
18 after the transfer was made; whether the transfer occurred shortly before or
19 shortly after a substantial debt was incurred. See Cal. Civ. Code §
20 3439.04(b).

21 Since existing law supports the Receiver's fraudulent transfer claims
22 on the basis of actual and constructive fraud, this Court should authorize the
23 Receiver to commence the proposed litigation so that the funds fraudulently
24 transferred can be recovered for the Receivership Estate.
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III.

**THE COURT SHOULD GIVE THE RECEIVER INITIAL SETTLEMENT
AUTHORITY WITH REGARD TO THE PROPOSED LITIGATION**

Should this Court grant the Receiver's motion and authorize him to commence the proposed litigation, the Receiver intends to serve a demand letter on the proposed defendants with an explanation of the proposed lawsuit, the facts underlying the proposed lawsuit, and the legal authority in support of the lawsuit. At the same time, the Receiver proposes to submit a settlement offer to the proposed defendants of not less than 85% of the demand made on each individual or entity. It is the Receiver's hope that some of the proposed defendants will accept the Receiver's offer and settle their liability to the Estate at the outset, without the Estate having to spend time and incur expenses. The Receiver has had success with this approach before. The Receiver requires this Court's authority to make such a settlement offer.

The Receiver also believes that it is likely that his offer will be met by counter-offers, at least from some of the proposed defendants or their counsel. In addition, once litigation is commenced, the Receiver is hopeful of settling the litigation. The Receiver, therefore, requests that he have authority, without further court order, to settle the fraudulent transfer litigation or the demands in an amount of \$100,000 or less.

Normally, when a receiver is involved in litigation and reaches a compromise with a defendant, the receiver would prepare and file a motion to obtain court approval of the compromise. This practice and procedure is in accord with general receivership law. "If the receiver's order of appointment expressly authorizes the receiver to compromise such claims, then he must use his discretion and best business judgment as to matters

1 too small to present to the court. However, it is better practice and the better
 2 part of wisdom to go to the court and ask the court's instructions as to
 3 compromising large or substantial claims." 2 Clark § 655. This process is
 4 similar to Bankruptcy Rule 9019. See Local Rule 66-8.

5 The Receiver believes it would be more efficient if the Receiver was
 6 not required to prepare and file separate motions each time he agrees to a
 7 proposed settlement with a defendant. Instead, the Receiver believes it
 8 would be more efficient and cost-effective for this Court to establish an initial
 9 settlement guideline pursuant to which the Receiver can settle with
 10 defendants without being required to prepare and file motions to obtain
 11 settlement approval. The Receiver proposes that he be authorized to settle
 12 with a defendant in the amount of \$100,000 or less.

14 IV.

15 **THE EMPLOYMENT OF ERVIN COHEN & JESSUP LLP AS THE** 16 **RECEIVER'S SPECIAL COUNSEL IS APPROPRIATE.**

17 The Receiver proposes to retain Ervin Cohen & Jessup LLP ("ECJ") on
 18 a reduced hourly basis to pursue the recovery of funds for the receivership
 19 estate. Specifically, the Receiver proposes to compensate ECJ on an hourly
 20 basis, and ECJ has agreed to discount all fees by ten per cent (10%). In
 21 addition, the Receiver will reimburse ECJ for their out-of-pocket costs.

22 The Receiver carefully weighed whether to pursue these claims on a
 23 contingency fee basis or on an hourly basis. A contingency fee basis
 24 protects the receivership estate from any risk, but it can also ultimately result
 25 in the receivership estate receiving less than it would were the litigation
 26 pursued on an hourly basis, particularly where claims have substantial merit.
 27 In this case, the Receiver has weighed the risks and benefits and
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1 recommends that the Court approve the retention of ECJ on the foregoing
 2 terms for several reasons. First, ECJ possesses substantial experience in
 3 filing and prosecuting actions to recover funds under the Uniform Voidable
 4 Transaction Act (California Code of Civil Procedure § 3439 et seq.) and
 5 established Ninth Circuit law. Second, ECJ litigated the Donell v. Kowell,
 6 case, which is regularly cited as authority for a receiver to recover fraudulent
 7 transfers. Third, ECJ represents the Receiver in another matter, in which
 8 ECJ has prosecuted similar actions under theories of actual and constructive
 9 fraud, and recovered funds for distribution to defrauded investors. The
 10 Receiver and ECJ are mindful of the need to weigh the benefits of pursuing
 11 an action given the costs that will be incurred and ECJ will provide regular
 12 status reports to the Receiver regarding the status of its efforts and its
 13 recommendations as to which claims to pursue in order to facilitate this
 14 review. The Receiver and ECJ believe that given the nature of the claims at
 15 issue, the receivership estate is likely to net more pursuing the claims on an
 16 hourly basis than it would on a contingency fee basis.

17 Therefore, the Receiver requests that the Court approve and confirm
 18 his retention of ECJ as special counsel on the terms specified above for the
 19 express purpose of seeking to recover funds for the benefit of the
 20 receivership estate.

21 22 V.

23 CONCLUSION

24 For the reasons set forth above, the Receiver requests that this Court
 25 grant the Receiver's motion and authorize him to commence litigation
 26 against individuals and/or entities that received funds from Elevate and
 27 Elevate did not receive adequate consideration in exchange. In addition, the
 28

1 Receiver proposes to retain ECJ on a reduced hourly fee basis to recover
2 funds for the benefit of the receivership estate. Lastly, the Receiver
3 requests authorization to make an initial settlement offer before filing suit of
4 not less than 85% of the demand made on each individual or entity, and to
5 grant the Receiver settlement authority at \$100,000 or less.

6
7 DATED: February 10, 2023 SMILEY WANG-EKVALL, LLP
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10 By: /s/ Kyra E. Andrassy

11 Kyra E. Andrassy
12 Michael L. Simon
13 Counsel for Jeffrey E. Brandlin,
14 Receiver
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DECLARATION OF JEFFREY E. BRANDLIN

I, Jeffrey E. Brandlin:

I have personal knowledge of the facts set forth herein and if called as a witness I could and would competently testify thereto.

1. On January 19, 2021, this Court issued its Preliminary Injunction and Appointment of a Permanent Receiver ("Order"). A copy of the Order is attached hereto as **Exhibit "A."** The Order granted Plaintiff's motion for a preliminary injunction and appointed me as Receiver.

2. The Order provides, in part, that I was appointed as Permanent Receiver for defendant Elevate Investments LLC ("Elevate") and its subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of Defendant Elevate, and the Receiver was immediately authorized, empowered and directed to perform the duties set forth in section IX of the Order.

3. Upon my appointment, my general counsel and I went to the office location of Elevate, located at 501 N. El Camino Real, Suite 226, San Clemente, CA. I was able to obtain some information from Justin King ("J. King"), including usernames and passwords for the computer and iPad, the different web-based programs used by Elevate, and Elevate's Gmail account. My counsel and I also changed the passwords in order to ensure that J. King was no longer able to access the data or the accounts. I had the computer imaged and reviewed the data that was retrieved in order to identify investors, creditors, and potential assets, and to understand how Elevate communicated with investors and solicited new investments. I

1 obtained a preliminary list of potential investors and provided them with
2 notice of my appointment, and directed them to the website that I
3 established in order to communicate with investors. I changed the lock to
4 the office and redirected Elevate's mail to my office.

5 4. The Court's December 28, 2020 temporary restraining order
6 identified four accounts in the name of Elevate and its affiliates that were
7 located at two different financial institutions. Concurrent with gaining control
8 of the office, I provided notice to the financial institutions of my appointment
9 and the order freezing of the accounts. I also requested all documents for
10 those accounts in order to prepare a forensic accounting to determine the
11 source of incoming funds to Elevate, and all disbursements.

12 5. I have completed my forensic accounting. Elevate did not
13 maintain accounting records, and therefore, I reconstructed Elevate's books
14 and records from bank records that I obtained.

15 6. Based on the information contained in the forensic accounting,
16 and other information available to me, I possess claims that can be pursued
17 to recover money for the receivership estate and defrauded investors.

18 7. Specifically, I believe it is appropriate to attempt to recover
19 fraudulent transfer claims against individuals or entities that received funds
20 from Elevate and Elevate did not receive adequate consideration in
21 exchange. I believe these funds are recoverable either as actual or
22 constructive fraudulent transfers. I believe that the potential amount to be
23 recovered by pursuing these claims is as much as \$1,000,000.00. If I can
24 settle or recover the funds without commencing litigation I will attempt to do
25 so. However, I believe it is appropriate to have authority to commence
26 litigation to recover the funds owed if settlements cannot be achieved.

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1 8. Based on my investigation, I believe that Elevate and Defendant
2 J. King engaged in Ponzi-like activity. For example, substantial funds that
3 were paid by investors were used by Elevate for the benefit of Defendant J.
4 King, his family, and other third parties. I believe that these payments are
5 recoverable as fraudulent transfers under California law, specifically the
6 Uniform Voidable Transaction Act (California Code of Civil Procedure § 3439
7 et seq.) and established Ninth Circuit law.

8 9. The basic theory of my proposed litigation is that I am entitled to
9 recover the funds Elevate transferred to certain individuals or entities, for
10 which transfers Elevate did not receive adequate consideration in exchange
11 therefor pursuant to theories of actual and constructive fraud under the
12 California Civil Code.

13 10. Specifically, I believe that I will be able to satisfy the elements of
14 constructive fraud causes of action pursuant to California Civil Code §§
15 3439.04(a)(2) and 3439.05 because Elevate made transfers to certain
16 individuals or entities without receiving any reasonably equivalent value in
17 exchange. Based on my forensic accounting of what money came into
18 Elevate and where it went, Elevate made payments to certain individuals or
19 entities that appear to be personal expenses of the principals or payments
20 that otherwise did not benefit Elevate or its investors. I also believe that I
21 will be able to show that at the time of the alleged fraudulent transfers,
22 Elevate was engaged in securities fraud based in part on the evidence
23 submitted by Plaintiff Securities and Exchange Commission (“SEC”) with its
24 Ex Parte Application filed on December 21, 2020. Moreover, because the
25 SEC’s evidence filed on December 21, 2020 shows that Defendant J. King’s
26 trading resulted in substantial losses year after year for Elevate’s clients,
27 and that Defendants J. King and Elevate were also making materially false
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1 and misleading statements to investors, I also believe that I can show that
2 Elevate was operating its business with an unreasonably small amount of
3 capital and intended to incur, or reasonably should have believed it would
4 incur, debts beyond its ability to pay as they became due.

5 11. Additionally, I believe that I will be able to show that certain
6 transfers made by Elevate for the benefit of Defendant J. King, his family,
7 and other third parties carry badges of fraud which would support a finding
8 of actual intent pursuant to California Civil Code § 3439.04(a)(1) and (b)— i.e.
9 whether the debtor removed or concealed assets; whether the value of the
10 consideration received by the debtor was reasonably equivalent to the value
11 of the asset transferred; whether the transfer was disclosed or concealed;
12 whether the debtor was insolvent or became insolvent shortly after the
13 transfer was made; whether the transfer occurred shortly before or shortly
14 after a substantial debt was incurred.

15 12. I believe, in my business judgment, that it is in the best interests
16 of the Receivership Estate and the defrauded investors that I be granted
17 permission by this Court to attempt to recover the funds that were
18 fraudulently transferred.

19 13. I intend to serve a demand letter on the proposed defendants
20 with an explanation of the proposed lawsuit, the facts underlying the
21 proposed lawsuit, and the legal authority in support of the lawsuit. At the
22 same time, I propose to submit a settlement offer to the proposed
23 defendants of not less than 85% of the demand made on each defendant. It
24 is my hope that some of the proposed defendants will accept my offer and
25 settle their liability to the Estate at the outset, without the Estate having to
26 spend time and incur expenses. However, in order to make such a
27 settlement offer I require the authority of this Court.
28

1 14. I also believe that it is likely that my offer will be met by
2 counteroffers, at least from some of the defendants or their counsel. In
3 addition, once litigation is commenced, I am hopeful of settling the litigation.
4 I, therefore, request that I have authority, without further court order, to settle
5 the fraudulent transfer litigation or the demands at \$100,000 or less.

6 15. Normally, when a receiver is involved in litigation and reaches a
7 compromise with a defendant, the receiver would prepare and file a motion
8 to obtain court approval of the compromise. This practice and procedure is
9 in accord with general receivership law. I believe it would be more efficient if
10 I was not required to prepare and file separate motions each time I agreed to
11 a settlement with a defendant. Instead, I believe it would be more efficient
12 and cost-effective for this Court to establish an initial settlement guideline
13 pursuant to which I can settle with defendants without being required to
14 prepare and file motions to obtain settlement approval. I propose that I be
15 authorized to settle with a defendant in the amount of \$100,000 or less.

16 16. I propose to retain Ervin Cohen & Jessup LLP ("ECJ") on an
17 hourly basis to pursue recovery of the claims described above for the
18 receivership estate. Specifically, I propose to compensate ECJ on an hourly
19 basis, and ECJ has agreed to discount all fees by ten percent (10%). In
20 addition, I will reimburse ECJ for their out-of-pocket costs. I weighed the
21 risks and benefits of compensating ECJ on an hourly basis versus on a
22 contingency fee basis and believe that given the nature of the claims at
23 issue, the receivership estate is likely to recover more if it pursues these
24 claims on an hourly basis rather than a contingency fee basis. ECJ will
25 provide me with regular reports on its progress and recommendations and I
26 will take the anticipated costs into account in determining whether ECJ
27 should proceed with its recommendations. In addition, the substantial
28

SMILEY WANG-EKVALL, LLP

3200 Park Center Drive, Suite 250

Costa Mesa, California 92626

Tel 714 445-1000 • Fax 714 445-1002

majority of the work will be performed by associates, not partner, and this will reduce the fees incurred. ECJ's associates, particularly Sonia Singh, are experienced in bringing these types of actions.

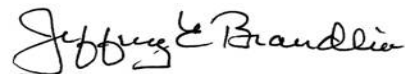
17. I recommend that the Court approve the retention of ECJ on the foregoing terms for several reasons. First, ECJ possesses substantial experience in filing and prosecuting actions to recover funds under the Uniform Voidable Transaction Act (California Code of Civil Procedure § 3439 et seq.) and established Ninth Circuit law. Second, ECJ litigated the Donell v. Kowell case, which is regularly cited as authority for a receiver to recover fraudulent transfers. Third, I have retained to ECJ to represent me in another matter, the results they achieved were, in my opinion, excellent, and as a result, the distribution to defrauded investors will be substantial.

18. Therefore, I request that the Court approve and confirm my retention of ECJ as special counsel on the terms specified above for the express purpose of seeking to recover funds for the benefit of the receivership estate.

19. Prior to filing the Motion, I conferred with the SEC regarding the proposed litigation and retention of ECJ and am informed that it has no objection, although I agreed to keep the SEC apprised as to the status of our efforts on these claims.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of February, 2023, at Los Angeles, California.



Jeffrey E. Brandlin

DECLARATION OF BYRON Z. MOLDO

I, Byron Z. Moldo, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the federal and state courts located in the State of California and am a partner of Ervin Cohen & Jessup LLP ("ECJ"). The foregoing and hereafter stated facts are within my personal knowledge and, if called as a witness in this matter, I could and would competently testify thereto.

2. On or about November 15, 2022, I was contacted by Jeffrey E. Brandlin, Permanent Receiver ("Receiver") who requested that ECJ serve as his special counsel in this matter to pursue the recovery, on a contingency basis, of claims against individuals and entities that received funds from Elevate Investments LLC ("Elevate") and Elevate did not receive adequate consideration in exchange.

3. On or about November 18, 2022, on behalf of ECJ, I agreed to represent the Receiver as special counsel, to be compensated on an hourly basis, and reimbursed for their out-of-pocket costs. I also agreed that ECJ would discount all fees by ten per cent (10%), and the hourly rates will be as follows for individuals working on this matter:

Byron Z. Moldo, Esq.	\$855
Sonia Singh, Esq.	\$450
[ECJ Junior Attorney]	\$378
[ECJ Paralegal]	\$207

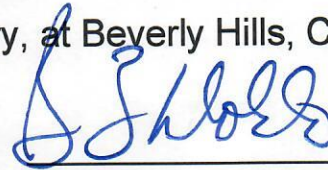
I anticipate that Sonia Singh or other junior attorneys will perform the vast majority of the work, which will reduce the amount of fees incurred.

4. Neither I, nor ECJ, are the attorneys for, associated with, or employed by an attorney for any party in this action.

1 5. I have been licensed as an attorney in the State of California
2 since 1983. My area of specialization is receiverships, and I serve as a
3 receiver in both state and federal courts, and as counsel for receivers in both
4 state and federal courts. A true and correct copy of my *curriculum vitae* is
5 attached hereto as **Exhibit "B."**

6 I declare under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8 Executed this 6th day of February, at Beverly Hills, California.



Byron Z. Moldo

SMILEY WANG-EKVALL, LLP

3200 Park Center Drive, Suite 250

Costa Mesa, California 92626

Tel 714 445-1000 • Fax 714 445-1002

EXHIBIT "A"

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JUSTIN ROBERT KING; AND
ELEVATE INVESTMENTS LLC,

Defendants,

SHANNON LEIGH KING,

Relief Defendant.

Case No. SACV 20-02398 JVS (DFMx)

**PRELIMINARY INJUNCTION AND
APPOINTMENT OF A PERMANENT
RECEIVER**

1 This matter came before the Court upon the Motion of Plaintiff Securities and
2 Exchange Commission (“SEC”) for a Preliminary Injunction Orders Freezing Assets;
3 Appointing a Permanent Receiver.

4 On December 28, 2020, this Court granted the SEC’s application for a
5 temporary restraining order (“TRO”) and set the matter for a hearing on the request
6 for preliminary injunctive relief. The Court held that hearing today, and based on the
7 arguments of counsel and the papers filed in support of the Motion the Court makes
8 the following findings:

- 9 A. This Court has jurisdiction over the parties to, and the subject matter of,
10 this action.
- 11 B. The SEC has made a sufficient and proper showing in support of the
12 relief granted herein, as required by Section 20(b) of the Securities Act
13 of 1933 (“Securities Act”) (15 U.S.C. s 77t(b)), Section 21(d) of the
14 Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §
15 78u(b)), and Section 209(d) of the Investment Advisers Act of 1940
16 (“Advisers Act”) (15 U.S.C. §§ 80b-9(d)), by evidence establishing a
17 *prima facie* case and reasonable likelihood that Justin Robert King
18 (“King”) and Elevate Investments LLC (“Elevate”) engaged in, are
19 engaging in, are about to engage in, and will continue to engage in
20 unless restrained transactions, acts, practices and courses of business that
21 constitute violations of Section 17(a) of the Securities Act, 15 U.S.C.
22 § 77q(a); Section 10(b) of the Securities Exchange Act, 15 U.S.C. §
23 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and Section
24 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(4) and Rule 206(4)-8, 17
25 C.F.R. § 275.206(4)-8(a).
- 26 C. Good cause exists to warrant the appointment of a permanent receiver
27 over Elevate and its subsidiaries and affiliates.
- 28 D. Good cause exists to believe that, unless restrained and enjoined by

1 order of this Court, Defendants King and Elevate and Relief Defendant
2 Shannon Leigh King (“S. King”) will dissipate, conceal, or transfer
3 assets which could be the subject to an order directing disgorgement or
4 the payment of civil money penalties in this action. It is appropriate for
5 the Court to issue this Preliminary Injunction so that prompt service on
6 appropriate financial institutions can be made, thus preventing the
7 dissipation of assets.

8 **I.**

9 IT IS HEREBY ORDERED that the SEC’s Motion is GRANTED.

10 **II.**

11 IT IS FURTHER ORDERED that Defendants King and Elevate and their
12 officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
13 persons in active concert or participation with any of them, who receive actual notice
14 of this Order, by personal service or otherwise, and each of them, be and hereby are
15 preliminarily restrained and enjoined from, directly or indirectly, in the offer or sale
16 of any securities, by the use of any means or instruments of transportation or
17 communication in interstate commerce or by the use of the mails:

- 18 A. employing any device, scheme or artifice to defraud;
19 B. obtaining money or property by means of any untrue statement of a
20 material fact or any omission to state a material fact necessary in order to
21 make the statements made, in light of the circumstances under which
22 they were made, not misleading; or
23 C. engaging in any transaction, practice, or course of business which
24 operates or would operate as a fraud or deceit upon the purchaser;
25 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

26 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil
27 Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
28 actual notice of this Order by personal service or otherwise: (a) Defendants’ officers,

agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

III.

IT IS FURTHER ORDERED that Defendants King and Elevate, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

A. employing any device, scheme or artifice to defraud;

B. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

C. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

IV.

IT IS FURTHER ORDERED that Defendants King and Elevate, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice

1 of this Order, by personal service or otherwise, and each of them, be and hereby are
 2 preliminarily restrained and enjoined from directly or indirectly, by the use of the
 3 mails or any means or instrumentality of interstate commerce, while acting as an
 4 investment adviser to a pooled investment vehicle:

5 A. making any untrue statement of a material fact or omitting to state a
 6 material fact necessary to make the statements made, in the light of the
 7 circumstances under which they were made, not misleading, to any
 8 investor or prospective investor in a pooled investment vehicle;

9 B. engaging in any act, practice, or course of business that is fraudulent,
 10 deceptive, or manipulative with respect to any investor or prospective
 11 investor in a pooled investment vehicle;

12 in violation of Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and
 13 Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
 15 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
 16 binds the following who receive actual notice of this Final Judgment by personal
 17 service or otherwise: (a) Defendants' officers, agents, servants, employees, and
 18 attorneys; and (b) other persons in active concert or participation with Defendants or
 19 with anyone described in (a).

20 V.

21 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court,
 22 Defendants King and Elevate and Relief Defendant S. King, and their officers,
 23 agents, servants, employees, attorneys, subsidiaries and affiliate, and those persons in
 24 active concert with them, who receive actual notice of this Order, by personal service
 25 or otherwise, and each of them, be and hereby are preliminarily restrained and
 26 enjoined from, directly or indirectly, transferring, assigning, selling, hypothecating,
 27 changing, wasting, dissipating, converting, concealing, encumbering, or otherwise
 28 disposing of, in any manner, any funds, assets, securities, claims or other real or

personal property, including any notes or deeds of trust or other interest in real property, wherever located, of any one of the Defendants or Relief Defendant, or their subsidiaries or affiliates, owned by, controlled by, managed by or in the possession or custody of any of them and from transferring, encumbering dissipating, incurring charges or cash advances on any debit or credit card of the credit arrangement of any one of the Defendants or Relief Defendant, or their subsidiaries and affiliates.

VI.

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, a freeze shall continue on all monies and assets (with an allowance for necessary and reasonable living expenses to be granted only upon good cause shown by application to the Court with notice to and an opportunity for the SEC to be heard) in all accounts at any bank, financial institution or brokerage firm, or third-party payment processor, all certificates of deposit, and other funds or assets, held in the name of, for the benefit of, or over which account authority is held by Defendants and Relief Defendant, including but not limited to the accounts listed below:

BROKERAGE/ BANK NAME	ACCOUNT NAME	ACCOUNT NO.
Charles Schwab & Co.	Elevate Investments	xxxx-6211
Charles Schwab & Co.	Justin Robert King	xxxx-5708
Charles Schwab & Co.	Shannon King	xxxx-4019
JPMorgan Chase Bank	Elevate Investments LLC	xxxx8157
JPMorgan Chase Bank	Area Auto Glass LLC	xxxx8687
JPMorgan Chase Bank	Shannon King and/or Justin King	xxxx8635
JP Morgan Chase Bank	Arizona Investment Kings	xxxx3592
Comerica Bank	Justin and Shannon King	xxxx1361

Any bank, financial institution or brokerage firm, or third-party payment

processor holding such monies and assets described above shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets except as otherwise ordered by this Court.

VII.

IT IS FURTHER ORDERED that any person who receives actual notice of this Order by personal service or otherwise, and who holds, possesses or controls assets exceeding \$5,000 for the account or benefit of any one of the Defendants or Relief Defendant, shall within 5 days of receiving actual notice of this Order provide counsel for the SEC with a written statement identifying all such assets, the value of such assets, or best approximation thereof, and any account numbers or account names in which the assets are held.

VIII.

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, each of the Defendants King and Elevate and Relief Defendant S. King, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books, records, computer programs, computer files, computer printouts, contracts, emails, correspondence, memoranda, brochures, or any other documents of any kind in their possession, custody or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise), pertaining in any manner to Defendants King or Elevate or Relief Defendant S. King.

IX.

IT IS FURTHER ORDERED that Jeff Brandlin is appointed as permanent receiver of Defendant Elevate and its subsidiaries and affiliates, with full powers of

1 an equity receiver, including, but not limited to, full power over all funds, assets,
2 collateral, premises (whether owned, leased, occupied, or otherwise controlled),
3 choses in action, books, records, papers and other property belonging to, being
4 managed by or in the possession of or control of Defendant Elevate, and that such
5 receiver is immediately authorized, empowered and directed:

6 A. to have access to and to collect and take custody, control, possession,
7 and charge of all funds, assets, collateral, premises (whether owned,
8 leased, pledged as collateral, occupied, or otherwise controlled), choses
9 in action, books, records, papers and other real or personal property,
10 wherever located, of or managed by Defendant Elevate and its
11 subsidiaries and affiliates (collectively, the “Assets”), with full power to
12 sue, foreclose, marshal, collect, receive, and take into possession all such
13 Assets (including access to and taking custody, control, and possession
14 of all such Assets);

15 B. to assume full control of Defendant Elevate and its subsidiaries and
16 affiliates by removing, as the receiver deems necessary or advisable, any
17 director, officer, attorney, independent contractor, employee, or agent of
18 Defendant Elevate and its subsidiaries and affiliates, and any named
19 Defendant or Relief Defendant, from control of, management of, or
20 participation in, the affairs of Defendant Elevate and its subsidiaries and
21 affiliates;

22 C. to have control of, and to be added as the sole authorized signatory for,
23 all accounts of the entities in receivership, including all accounts at any
24 bank, title company, escrow agent, financial institution or brokerage firm
25 (including any futures commission merchant) which has possession,
26 custody or control of any Assets, or which maintains accounts over
27 which Defendant Elevate and its subsidiaries and affiliates, and/or any of
28 its employees or agents have signatory authority;

- 1 D. to conduct such investigation and discovery as may be necessary to
2 locate and account for all of the assets of or managed by Defendant
3 Elevate and its subsidiaries and affiliates, and to engage and employ
4 attorneys, accountants and other persons to assist in such investigation
5 and discovery;
- 6 E. to take such action as is necessary and appropriate to preserve and take
7 control of and to prevent the dissipation, concealment, or disposition of
8 any Assets;
- 9 F. to choose, engage, and employ attorneys, accountants, appraisers, and
10 other independent contractors and technical specialists, as the receiver
11 deems advisable or necessary in the performance of duties and
12 responsibilities under the authority granted by this Order;
- 13 G. to make an accounting, as soon as practicable, to this Court and the SEC
14 of the assets and financial condition of Defendant Elevate and its
15 subsidiaries and affiliates, and to file the accounting with the Court and
16 deliver copies thereof to all parties;
- 17 H. to make such payments and disbursements from the Assets taken into
18 custody, control, and possession or thereafter received by him or her,
19 and to incur, or authorize the making of, such agreements as may be
20 necessary and advisable in discharging his or her duties as permanent
21 receiver;
- 22 I. to investigate and, where appropriate, to institute, pursue, and prosecute
23 all claims and causes of action of whatever kind and nature that may
24 now or hereafter exist as a result of the activities of present or past
25 employees or agents of Defendant Elevate and its subsidiaries and
26 affiliates;
- 27 J. to institute, compromise, adjust, appear in, intervene in, or become party
28 to such actions or proceedings in state, federal, or foreign courts, which

1 (i) the receiver deems necessary and advisable to preserve or recover any
2 Assets, or (ii) the receiver deems necessary and advisable to carry out
3 the receiver's mandate under this Order; and

4 K. to have access to and monitor all mail, electronic mail, and video phone
5 of the entities in receivership in order to review such mail, electronic
6 mail, and video phone which he or she deems relates to their business
7 and the discharging of his or her duties as permanent receiver.

8 **X.**

9 IT IS FURTHER ORDERED that Defendants King and Elevate, and their
10 subsidiaries and affiliates, including all of the other entities in receivership, and their
11 officers, agents, servants, employees and attorneys, and any other persons who are in
12 custody, possession or control of any assets, collateral, books, records, papers or
13 other property of or managed by any of the entities in receivership, shall forthwith
14 give access to and control of such property to the permanent receiver.

15 **XI.**

16 IT IS FURTHER ORDERED that no officer, agent, servant, employee or
17 attorney of Defendants King and Elevate shall take any action or purport to take any
18 action, in the name of or on behalf of Defendant Elevate or its subsidiaries or
19 affiliates without the written consent of the permanent receiver or order of this Court.

20 **XII.**

21 IT IS FURTHER ORDERED that, except by leave of this Court, during the
22 pendency of this receivership, all clients, investors, trust beneficiaries, note holders,
23 creditors, claimants, lessors and all other persons or entities seeking relief of any
24 kind, in law or in equity, from Defendant Elevate, or its subsidiaries or affiliates, and
25 all persons acting on behalf of any such investor, trust beneficiary, note holder,
26 creditor, claimant, lessor, consultant group or other person, including sheriffs,
27 marshals, servants, agents, employees and attorneys, are hereby restrained and
28 enjoined from, directly or indirectly, with respect to these persons and entities:

1 receiver incurred in connection with the performance of his or her duties described in
2 this Order, including the costs and expenses of those persons who may be engaged or
3 employed by the permanent receiver to assist him or her in carrying out his or her
4 duties and obligations. All applications for costs, fees, and expenses for services
5 rendered in connection with the receivership other than routine and necessary
6 business expenses in conducting the receivership, such as salaries, rent, and any and
7 all other reasonable operating expenses, shall be made by application setting forth in
8 reasonable detail the nature of the services and shall be heard by the Court.

9 **XV.**

10 IT IS FURTHER ORDERED that no bond shall be required in connection with
11 the appointment of the permanent receiver. Except for an act of gross negligence, the
12 permanent receiver shall not be liable for any loss or damage incurred by any of the
13 defendants, their officers, agents, servants, employees and attorneys or any other
14 person, by reason of any act performed or omitted to be performed by the permanent
15 receiver in connection with the discharge of his or her duties and responsibilities.

16 **XVI.**

17 IT IS FURTHER ORDERED that representatives of the SEC and any other
18 government agency are authorized to have continuing access to inspect or copy any
19 or all of the corporate books and records and other documents of Defendant Elevate
20 and its subsidiaries and affiliates, and the other entities in receivership, and
21 continuing access to inspect their funds, property, assets and collateral, wherever
22 located.


23 **XVII.**

24 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this
25 action for the purpose of implementing and carrying out the terms of all orders and
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1 decrees which may be entered herein and to entertain any suitable application or
2 motion for additional relief within the jurisdiction of this Court.

3
4 IT IS SO ORDERED.

5
6 Dated: January 19, 2021


UNITED STATES DISTRICT JUDGE
HONORABLE JAMES V. SELNA

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8 Presented by:
9 Lynn M. Dean
10 Kathryn Wanner
11 Attorneys for Plaintiff
12 Securities and Exchange Commission
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EXHIBIT "B"

BYRON Z. MOLDO
9401 Wilshire Boulevard, 12th Floor
Beverly Hills, CA 90212
Tel: 310/281-6354
Fax: 310/859-2325
email: bmoldo@ecjlaw.com

QUALIFICATIONS TO SERVE AS RECEIVER OR REFEREE

Byron Z. Moldo is an attorney admitted to practice in the State of California. He was admitted to the California State Bar in December, 1983. Byron Z. Moldo is a partner in the law firm of Ervin Cohen & Jessup LLP.

Since being admitted to the California bar, he has been appointed Receiver and partition referee, and served as an attorney for receivers and referees, in hundreds of matters in state and federal court.

He has handled complex receivership matters such as partnership, corporate and marital dissolutions, including law firm dissolutions, operating auto dealerships, medical practices, outpatient surgery centers, and government enforcement receivership matters, such as actions brought by the Securities and Exchange Commission, Federal Trade Commission, and California Departments of Corporations (now known as the Department of Financial Protection and Innovation) and Real Estate. In addition, Mr. Moldo has been appointed Receiver in criminal cases at the request of District Attorneys. Many of these matters have resulted in massive losses to consumer due to the use of Ponzi schemes.

Frequently, he has represented receivers in cases dealing with pension funds and profit sharing plans whose investments include substantial real estate holdings, including office buildings, hotels, and apartment buildings. As a Receiver and attorney for receivers, Byron Z. Moldo is able to ensure that the Receiver protects the collateral during foreclosure. The appointment of a Receiver provides a level and degree of protection for the secured creditor, and more importantly, provides information regarding the income derived from the property and the manner in which expenses are paid. Often times, this information is not provided by the owner of the property, despite a demand by the secured creditor.

As a receiver or as the attorney for a receiver, he has been involved in various types of businesses, including manufacturing, real estate and construction, hotel and motel operation and management, all phases of condominium conversion, retail sales, professional services, hospitals and convalescent homes, medical practices, trust deed brokers, import/export and other related businesses in the Asian community, wineries, agriculture, farming and ranching, bars and restaurants, tortilla manufacturers, industrial complexes, trucking companies, auto dealerships, real property subject to outstanding health and safety code violations, plastics, all types of manufacturing, personal placement agencies, entertainment clubs, gas and oil wells, and collection agencies.

Additionally, he has been appointed as a partition referee in many matters. The use of a partition referee can be extremely effective when partners dissolve a business, are forced to part with property, or a marriage breaks up. Partition referees, with the aid of the Court, are able to minimize or eliminate stubbornness of parties, implement Court orders, and accomplish goals.

During his legal career he has represented receivers who have managed hundreds of rental properties, ranging in size from single-family dwellings to apartment complexes and mobile home parks with as many as 400 units. He has also represented receivers who have managed complex business operations such as farm and ranch land, horse stables, hotels, motels, supermarkets, coffee shops, bars, discotheques, and restaurants with both seating capacity and take-out windows; the manufacture of items ranging from sportswear to cosmetics and golf club heads; legal and medical offices, including the collection of their accounts receivable; hospitals and convalescent hospitals and homes, including collection of their ordinary accounts receivable and intermediary collection of Medicare and Medi-Cal payments; the operation of meat packing plants and the sale of livestock; trust deed brokerage firms, including collection of land sale contracts and trust deed notes; the sale of tracts of houses and completion of and sale of condominiums; the sale of real property, either pursuant to court order or in aid of execution of judgment; the construction of apartment buildings, office complexes, houses and condominiums, including off-site improvements.

In the performance of his duties, he has dealt with various federal, state, county and city taxing and regulatory agencies, such as the Public Utilities Commission, Interstate Commerce Commission, State Board of Equalization, Franchise Tax Board, Department of Real Estate, Internal Revenue Service, Employment Development Department, County Health Department, Alcoholic Beverage Control, Building and Safety, City Zoning, Department of Motor Vehicles, Consumer Affairs, etc.

His office maintains a full-time staff of accounting and bookkeeping personnel, as well as field personnel who make regular inspection trips to properties and businesses. These individuals are very experienced, work solely in the management of receivership or refereeship estates, and perform no services for his law firm. Regular inspection trips by field staff maintains honesty among employees hired to operate businesses, as these visits are staggered in time and sometimes unannounced. This procedure is extremely important in supervising the operation of business establishments with daily cash receipts.

Accounting reports are compiled on a regular basis. These reports include information on the status of the subject business or property with special focus on its income and expenses. These reports provide detailed information pertaining to the business or property, including an in-depth analysis of all accounts receivable.

REFERENCES:

David Allen, Esq.
Riverside County District Attorney
4075 Main Street, 8th Floor
Riverside, CA 92501
951.955.5441

David M. Stern, Esq.
Klee, Tuchin, Bogdanoff & Stern LLP
1801 Century Park East, Suite 2600
Los Angeles, CA 90067-1698
310.407.4000

John A. Moe, II, Esq.
Dentons LLP
300 S. Grand Avenue, Suite 1400
Los Angeles, CA 90071
213.892.4905

David Eldan, Esq.
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
213.269.6041

Mary Ann Smith, Esq.
Deputy Commissioner
Department of Financial Protection & Innovation
2101 Arena Blvd., Suite 269
Sacramento, CA 95834
916.224.1778

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 **2/10/2023**, I served true copies of the following document(s) described as
MOTION OF JEFFREY E. BRANDLIN, PERMANENT RECEIVER, FOR AUTHORITY TO COMMENCE LITIGATION TO RECOVER FRAUDULENT TRANSFERS AND EMPLOY ERVIN COHEN & JESSUP LLP AS SPECIAL COUNSEL, EFFECTIVE NOVEMBER 15, 2022; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF JEFFREY E. BRANDLIN AND BYRON Z. MOLDO
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, 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 **2/10/2023**, 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 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 the United States Postal Service, 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 below per agreement.

() (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 February 10, 2023, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

SERVICE LIST

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Attorneys for Jeffrey E. Brandlin,
Receiver

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JUSTIN ROBERT KING; AND
ELEVATE INVESTMENTS LLC,

Defendant.

and

SHANNON LEIGH KING,

Relief Defendant.

Case No. 8:20-cv-02398-JVS-DFM

**[PROPOSED] ORDER GRANTING
MOTION OF JEFFREY E.
BRANDLIN, PERMANENT
RECEIVER, FOR AUTHORITY TO
COMMENCE LITIGATION TO
RECOVER FRAUDULENT
TRANSFERS AND EMPLOY
ERVIN COHEN & JESSUP LLP AS
SPECIAL COUNSEL, EFFECTIVE
NOVEMBER 15, 2022**

DATE: March 13, 2023
TIME: 1:30 p.m.
CTRM: 10C
JUDGE: Hon. James V. Selna

The Court having reviewed the *Motion of Jeffrey E. Brandlin, Permanent Receiver, for Authority to Commence Litigation to Recover Fraudulent Transfers and Employ Ervin Cohen & Jessup as Special Counsel, Effective November 15, 2022* (the "Motion") and all papers and evidence filed in support of the Motion and having found that notice of the Motion was proper and good cause exists for the granting of the relief sought in the Motion,

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IT IS ORDERED AS FOLLOWS:

(1) The Motion is granted and the Receiver¹ is authorized to commence the litigation described in the Motion;

(2) The Receiver is authorized to make the settlement offers described in the Motion and is authorized to settle any demand or case where the amount demanded is \$100,000 or less without the necessity of a further Court order; and

(3) The Receiver is authorized to employ Ervin, Cohen & Jessup, LLP, as his special counsel on the terms set forth in the Motion, with the allowance of its fees and costs subject to further Court order.

DATED: _____, 2023

JAMES V. SELNA, United States District
Judge

¹ Capitalized terms not defined herein shall have the meaning given to them in the Motion.