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Counsel for Jeffrey 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. SACV20-02398-JVS
(DFMx)

**NOTICE OF MOTION AND
MOTION OF RECEIVER, JEFFREY
E. BRANDLIN, FOR ORDER:**

- (1) APPROVING CLAIM FORMS;**
- (2) SETTING A CLAIMS BAR
DATE; AND**
- (3) ESTABLISHING SUMMARY
CLAIMS PROCEDURES**

[Memorandum of Points and
Authorities with Declaration of
Jeffrey E. Brandlin submitted
concurrently herewith]

DATE: September 12, 2022
TIME: 1:30 p.m.
CTRM: 10C
JUDGE: Hon. James V. Selna

**TO THE HONORABLE JAMES V. SELNA, UNITED STATES DISTRICT
JUDGE, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

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PLEASE TAKE NOTICE THAT Jeffrey E. Brandlin, the Court-appointed receiver (the "Receiver") over Elevate Investments, LLC, and its subsidiaries and affiliates (together, "Receivership Entity"), will and hereby does move this Court for an order approving the claim forms for investors and creditors of the Receivership Entity, setting a claims bar date, and establishing procedures for the submission of and objection to claims.

The Motion is made pursuant to the general principles of the law governing federal equity receiverships, section IX.H of the *Preliminary Injunction and Appointment of a Permanent Receiver* [Docket No. 26], Federal Rule of Civil Procedure 66, and Local Civil Rule 66. This Motion is based on this Notice of Motion and Motion, the concurrently submitted Memorandum of Points and Authorities and Declaration of Jeffrey E. Brandlin, and any argument or evidence presented to the Court at any hearing on the Motion. The Motion, Memorandum of Points and Authorities, and other supporting papers are available on the website established by the Receiver to provide information to parties in interest, which is located at www.donlinrecano.com/Clients/ei/Index.

PLEASE TAKE FURTHER NOTICE that the hearing is nominally scheduled for September 12, 2022 at 1:30 p.m. Because of the pandemic, parties will be notified three days in advance if there is to be a hearing. If there is a hearing, the hearings are being staggered to minimize the number of people in the courtroom. If a hearing is not set, then the parties may request a hearing by filing a brief of no more than five pages by 5:00 p.m. the day following the date for which the hearing was nominally set. The Court will then determine if a hearing is necessary. If no request is submitted, the matter will be submitted on the papers and the tentative ruling will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.

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PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7-9, each opposing party shall, not later than twenty-one (21) days before the dates 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 Motion 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 Motion. 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.

SUMMARY OF THE RELIEF BEING SOUGHT

The Receiver believes it is appropriate to establish a claims procedure at this juncture because it is expected that there will be a distribution from the estate of the Receivership Entity and the claims procedure will provide a mechanism to determine the scope of the claims against the estate with as much certainty as possible. Upon approval of the investor claim form, the Receiver will mail each investor a letter and the investor claim form with the Receiver's calculation of the net amount that they are owed, the amount they invested as verified by the Receiver based on the available books and records, and the amount, if any, that the books and records reflect the investor received. If investors agree with the Receiver's calculation, then all they need to do is sign the investor claim form and return it to the Receiver. If they disagree with the Receiver's information, then they will have an opportunity to provide documentation that supports their calculation and to return the signed investor claim form with the supporting documentation to the Receiver. Additionally, upon approval of the creditor claim form, the

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Receiver will mail each creditor a creditor claim form. Creditors will need to complete the creditor claim form and return it to the Receiver.

The Receiver and his team will review the claim forms as they are returned. If the Receiver disagrees with the calculation of a claim by an investor, he will first attempt to informally resolve the dispute. If the dispute cannot be resolved informally, then the Receiver will indicate that there is a dispute requiring judicial resolution in an omnibus motion to approve the recommended treatment of claims and indicate what relief the Receiver believes is appropriate. The investors holding disputed claims will then have an opportunity to object to that requested relief, and the Court will adjudicate any disputes. As to creditors, although the Receiver is likely to later seek an order of this Court subordinating claims of creditors to the claims of investors for equitable reasons, he is not yet seeking that ruling and would first like more information on the realm of creditor claims because the books and records do not reflect substantial creditor claims.

In order to aid the Receiver's efficient administration of the estate, he proposes that investors and creditors be given sixty (60) days from when the Receiver sends out the claim form and notice of the Claims Bar Date to investors and creditors. For investors and creditors, the Receiver proposes to provide notice of the Claims Bar Date by mail, on the website he set up for these cases, and by publishing notice of the Claims Bar Date in a newspaper with local circulation in Orange County. The Receiver will file a notice of the Claims Bar Date with the Court so that it is part of the record.

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1 Any claims not timely received by the Receiver will not be entitled to share in
2 any distribution from the estate.

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4 Respectfully submitted,

5 DATED: August 12, 2022

SMILEY WANG-EKVALL, LLP

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8 By: /s/ Michael L. Simon

9 Kyra E. Andrassy

10 Michael L. Simon

11 Counsel for Jeffrey E. Brandlin,
Receiver

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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 8/12/2022, I served true copies of the following document(s) described as

NOTICE OF MOTION AND MOTION OF RECEIVER, JEFFREY E. BRANDLIN, FOR ORDER: (1) APPROVING CLAIM FORMS; (2) SETTING A CLAIMS BAR DATE; AND (3) ESTABLISHING SUMMARY CLAIMS PROCEDURES

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 8/12/2022, 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.

(X) (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 August 12, 2022, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

SERVICE LIST**BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):**☐ **Kyra E Andrassy**

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

☐ **Jeffrey E Brandlin**

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Justin and Shannon King

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San Juan Capistrano, CA 92675

Justin and Shannon King

10639 West Chestnut Street

Marana, AZ 85653

BY EMAIL:

All investors served by email. Email addresses withheld from this proof of service to protect the investors' privacy.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
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11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 JUSTIN ROBERT KING; AND
16 ELEVATE INVESTMENTS, LLC,

17 Defendants,

18 and

19 SHANNON LEIGH KING,

20 Relief Defendant.
21
22

Case No. SACV20-02398-JVS
(DFMx)

**ORDER GRANTING MOTION OF
RECEIVER, JEFFREY E.
BRANDLIN, FOR ORDER:**

- (1) **APPROVING CLAIM FORMS;**
(2) **SETTING A CLAIMS BAR
DATE; AND**
(3) **ESTABLISHING SUMMARY
CLAIMS PROCEDURES**

DATE: September 12, 2022
TIME: 1:30 p.m.
JUDGE: Hon. James V. Selna

23 The Court having reviewed the *Motion of Receiver, Jeffrey E. Brandlin,*
24 *for Order: (1) Approving Claim Forms; (2) Setting a Claims Bar Date; and (3)*
25 *Establishing Summary Claims Procedures* (the "Motion"), having found that
26 notice of the Motion was proper, having reviewed all papers and evidence
27 filed in support of and response to the Motion, and having found good
28 cause,

IT IS ORDERED AS FOLLOWS:

(1) The Motion is granted in its entirety;

(2) The form of the Investor Claim Form¹ attached to the Motion as Exhibit "A," the draft letter to accompany the Investor Claim Form attached to the Motion as Exhibit "B," the notice and Creditor Claim Form attached to the Motion as Exhibit "C", and the draft letter to accompany the Creditor Claim Form attached to the Motion as Exhibit "D" are approved;

(3) The Receiver's proposed means of noticing investors and creditors, including via the website, mail, and by publication of notice of the claims process in newspapers with local circulation in Orange County, California, is approved;

(4) The use of summary proceedings for the determination of claims against the Receivership Entity, as detailed in the Motion, is approved; and

(5) The deadline for the submission of the Investor Claim Form and the Creditor Claim Form is sixty (60) days from service of the form on investors and creditors, as the case may be, and the Receiver shall file a notice of that bar date with the Court once it is set.

DATED: _____, 2022

JAMES V. SELNA, United States District
Judge

¹ All capitalized terms not expressly defined herein shall have the meanings ascribed to them in the Motion.