

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

SMILEY WANG-EKVALL, LLP
Kyra E. Andrassy, State Bar No. 207959
kandrassy@swelawfirm.com
Timothy W. Evanston, State Bar No. 319342
tevanston@swelawfirm.com
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Telephone: 714 445-1000
Facsimile: 714 445-1002

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,

SHANNON LEIGH KING,

Relief Defendant.

Case No. SACV20-02398-
JVS(DFMx)

**STATUS REPORT OF THE
RECEIVER FOR THE PERIOD
FROM NOVEMBER 1, 2021,
THROUGH OCTOBER 31, 2022**

No hearing required

Judge: James V. Selna

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

Pursuant to Local Civil Rule 66-6.1, Jeffrey Brandlin, the permanent receiver ("Receiver") appointed over Elevate Investments LLC and its subsidiaries and affiliates (together, "Elevate") provides the following status report for the period from November 1, 2021, through October 31, 2022, to apprise the Court and creditors and investors of the status of the receivership.

1

2 **I. ACTIONS TAKEN BY THE RECEIVER**

3 **A. The Actions Taken in the First Days of the Receivership¹**

4 The Receiver previously reported the following about the first days of

5 the receivership, but includes it again because he has since identified

6 additional creditors and investors who may not have seen the initial status

7 report filed by the Receiver while he was still the temporary receiver.

8 Immediately after being notified of his appointment on December 28,

9 2020, the Receiver and his proposed counsel went to the office location for

10 Elevate Investments, LLC, located at 501 N. El Camino Real, Suite 226, San

11 Clemente, CA. The office is located within an executive suite and consists

12 of one room. The Receiver gained access to the office and, because the

13 building manager had given Justin King notice of the Receiver's presence,

14 was soon met by Justin and Shannon King. While the Receiver surveyed

15 the office, counsel for the Receiver had a phone call with an attorney who

16 said that he was representing Elevate. The Kings were on the call. Counsel

17 for the Receiver explained the purpose of the receivership and the scope of

18 the duties of the Receiver and answered questions about what could be

19 expected.

20 The Receiver was able to get some information from Mr. King,

21 including usernames and passwords for the computer and the iPad, the

22 different web-based programs used by Elevate, and Elevate's Gmail

23 account. The Receiver and his counsel then changed the passwords in

24 order to ensure that Mr. King was no longer able to access the data or the

25 accounts. The Receiver had the computer imaged and reviewed the data

26 _____

27 ¹ This section contains the same information presented in the last status report for the

28 period through October 31, 2021, but is included in this status report in the interest of thoroughness.

1 that was retrieved in order to identify investors, creditors, and potential
2 assets, and to understand how Elevate communicated with investors and
3 solicited new investments. The Receiver obtained a preliminary list of
4 potential investors and gave them notice of the appointment of the Receiver
5 and directed them to the website that the Receiver established in order to
6 communicate with investors.² The Receiver changed the lock to the office
7 and redirected Elevate's mail to the Receiver's office. The Receiver has
8 since returned possession of the office to the landlord.

9 The temporary restraining order identified four different accounts in the
10 name of Elevate and its affiliates that were located at two different financial
11 institutions. Concurrent with gaining control of the office, the Receiver's
12 team gave notice to the financial institutions of his appointment and the
13 order freezing of the accounts. The Receiver also requested all documents
14 for those accounts in order to prepare a forensic accounting to determine
15 what money came into Elevate and where it went. The Receiver's priority
16 was with Elevate's account at Charles Schwab, because the account held
17 some options in derivate investments. The Receiver had a phone call with
18 representatives from Charles Schwab in order to understand the
19 investments and to determine the best way to minimize any further loss to
20 the receivership estate. The Receiver instructed Charles Schwab to sell and
21 liquidate the positions that remained and obtained \$1,581,932 from Elevate's
22 account at Charles Schwab.

23 The Standardized Fund Accounting Report through October 31, 2022,
24 is attached as Exhibit "1."

25
26
27
28 ² That website is at <https://www.donlinrecano.com/Clients/ei/Index>.

1 **B. Results of the Forensic Accounting**

2 The Receiver has completed his forensic accounting of what money
3 came into Elevate and where it went. Elevate did not maintain accounting
4 records, so the Receiver reconstructed Elevate's books and records from
5 bank records that he obtained.

6 From May 2019 through December 2020 when the Receiver was
7 appointed, Elevate raised \$8,298,985 from investors. It distributed \$409,525
8 to investors, leaving net investments of \$7,889,460. Elevate earned
9 \$348,430 in market gains, but lost \$5,883,007. Elevate spent a total of
10 \$2,312,678 on items that, with very few exceptions, appear to be personal
11 expenses of the principals or payments that otherwise did not benefit
12 Elevate or its investors. These are comprised of the following: (1) \$82,340
13 on mortgage payments and expenses for a family member residing in an
14 elder care facility;³ (2) \$41,068 in auto payments for the cars driven by the
15 Kings; (3) \$683,069 in credit card payments for charges that appear to be
16 mostly personal expenses; (4) \$625,511 in payments to the principals; (5)
17 \$368,865 in payments to non-investor individuals; (6) \$118,000 in rent
18 payments for the house in which the principals resided; and (7) \$220,485 in
19 miscellaneous expenses. Attached as Exhibit "2" is a summary of the
20 sources and uses of funds.

21 The Receiver recovered \$1,581,932 from bank accounts and
22 brokerage accounts belonging to Elevate and successfully expanded the
23 scope of the receivership estate to include additional accounts that
24 increased the amount of the recovery by \$97,612.02.

25 The Receiver is in the process of evaluating some clawback actions
26 against third parties who received funds from Elevate without providing

27 _____
28 ³ Only \$2,075 of this is for the executive suite used by Elevate.

1 Elevate with reasonably equivalent value in order to determine whether they
2 should be pursued and expects to file a motion for authority to do so in the
3 near future.

4 **C. The Claim Process**

5 The Receiver has obtained approval of the procedure for creditors and
6 investors to submit their claims to the Receiver, and the Receiver is in the
7 process of preparing the claim packages. Once they are served, creditors
8 and investors will have sixty days to return their claims forms and any
9 supporting documentation to the Receiver. The Receiver will then review
10 the submitted claims and if there are any disputes or discrepancies, attempt
11 to informally resolve those issues. Any issues that cannot be resolved
12 informally will be presented to the Court for judicial resolution. Investors will
13 only be allowed claims for the amounts invested less any distributions,
14 regardless of whether the distributions were characterized as interest or
15 principal repayments. The Receiver will seek to disallow any claims for
16 gains or interest on investments.

17 The Receiver has not yet determined if he will seek to make an interim
18 distribution or if he will only make one final distribution. This depends, in
19 part, on the outcome of counsel's review of avoidance actions and on
20 resolution of the disgorgement issues regarding Mr. King. The Receiver
21 expects to have more information to make this determination in the coming
22 months.

23 **D. Status of the Civil Enforcement Action and Criminal**
24 **Charges Against Mr. King**

25 The SEC and Shannon King have resolved the civil enforcement
26 action through a stipulated judgment in which she agreed to disgorge
27 \$398,000 plus prejudgment interest, with that judgment to be deemed
28 satisfied by the funds recovered and being held by the Receiver.

1 In May 2021, the SEC and Justin King entered into a stipulated partial
 2 judgment under which Mr. King agreed not to contest the SEC's allegations
 3 against him and with the amount of the judgment against him to be
 4 determined at a later point. The amount of his disgorgement judgment has
 5 not yet been fixed. In addition, in February 2022, Mr. King was charged by
 6 federal prosecutors with one count of committing fraud by the use of
 7 interstate wire communication for his conduct at Elevate. The criminal case
 8 remains pending.

10 **II. Receipts and Expenditures of the Receivership Estate**

11 An accounting of the funds received by the Receiver and expenses
 12 paid to date is attached as Exhibit "1." The Court previously allowed the
 13 Receiver fees of \$70,837.50 and costs of \$110.29 and allowed his counsel,
 14 Smiley Wang-Ekvall, fees of \$45,179.00 and costs of \$3,600.50. The Court
 15 authorized 100% of the costs and 80% of the fees to be paid on an interim
 16 basis, with payment of the held back amount to be sought in connection with
 17 the Receiver's final report.

18 Since then and through October 31, 2022, the Receiver has incurred
 19 fees of \$41,088.75, and his counsel has incurred fees of \$23,467.50 and
 20 costs of \$596.90. These fees and costs are subject to the approval of the
 21 Court which will be sought at a later date.

22 DATED: December 8, 2022 Respectfully submitted,

23 SMILEY WANG-EKVALL, LLP

24
 25 By: /s/ Kyra E. Andrassy
 26 KYRA E. ANDRASSY
 27 Counsel for Jeffrey Brandlin,
 28 Permanent Receiver

SMILEY WANG-EKVALL, LLP

3200 Park Center Drive, Suite 250

Costa Mesa, California 92626

Tel 714 445-1000 • Fax 714 445-1002

EXHIBIT "1"

STANDARDIZED FUND ACCOUNTING REPORT for {Name of Fund} - Cash Basis

Receivership; Civil Court Docket No.

Reporting Period MM/DD/YYYY to MM/DD/YYYY or Final Report Dated MM/DD/YYYY

08/31/2022 - 10/31/2022

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of MM/DD/YYYY): 08/31/2022		\$1,566,763.34	
	Increases in Fund Balance:			
Line 2	Business Income			
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income		\$13,391.28	
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income			
Line 8	Miscellaneous - Other			
	Total Funds Available (Lines 1 - 8):		\$1,580,154.62	
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals		\$237.94	
Line 10b	Business Asset Expenses			
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			\$237.94
	Total Disbursements for Receivership Operations			
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11):			
Line 13	Ending Balance (As of MM/DD/YYYY): 10/31/2022		1,579,916.68	

STANDARDIZED FUND ACCOUNTING REPORT for {Name of Fund} - Cash Basis

Receivership; Civil Court Docket No.

Reporting Period MM/DD/YYYY to MM/DD/YYYY or Final Report Dated MM/DD/YYYY

08/31/2022- 10/31/2022

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets	Cash		\$1,579,916.60

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			

Receiver:

By: 

(signature)

Jeffrey E. Brandlin

(printed name)

President - Brandlin & Associates

(title)

Date: 11-15-22

EXHIBIT "2"

Elevate Investments

Sources & Uses of Funds

	B	C	D
1	<i>Elevate Investments - Sources & Uses</i>		
2			
3	Total Beginning Balance - circa May 2019	\$ 13,802	
4	<u>Sources</u>		
5	Contributions from Investors	8,298,985	
6	Intra & Inter Bank Transfers	739,898	
7	Bank Transfers to Brokerage Accts.	2,330,043	
8	Brokerage Transfers to Bank Accts.	1,563,296	
9	Intra Brokerage Transfers	1,030,372	
10	Other Sources	986,969	
11	Total Sources	14,949,563	
12			
13	<u>Uses</u>		
14	Distributions to Investors	(409,525)	
15	Intra & Inter Bank Transfers	(691,108)	
16	Brokerage Transfers to Bank Accts.	(1,253,165)	
17	Bank Transfers to Brokerage Accts.	(1,920,718)	
18	Intra Brokerage Transfers	(1,067,372)	
19	Other Uses	(2,312,678)	
20	Total Uses	(7,654,567)	
21			
22	Market Gains Realized	348,430	
23	Market Losses Realized	(5,883,007)	
24	Market Losses, Net	(5,534,576)	
25			
26	Ending Balance - 12/31/20	\$ 1,774,222	
27			
28	Funds Transferred from Schwab 6211	\$ 1,565,242	
29	Total Funds Transferred to Receiver - 1/11/21	1,581,942	
30	Variance	\$ (16,700)	
31			
32			

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 **12/8/2022**, I served true copies of the following document(s) described as
STATUS REPORT OF THE RECEIVER FOR THE PERIOD FROM NOVEMBER 1, 2021, THROUGH OCTOBER 31, 2022

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 **12/8/2022**, 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.

() (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 December 8, 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**

kandrassy@swelawfirm.com

☐ **Lynn Dean**

deanl@sec.gov,LAROFiling@sec.gov,delgadilloj@sec.gov,simundacc@sec.gov,irwinma@sec.gov

☐ **Justin Robert King**

jrking80@gmail.com

☐ **Shannon King**

slking311@gmail.com

☐ **Michael J. Quinn**

mquinn@vedderprice.com,jgimble@vedderprice.com,michael-quinn-2870@ecf.pacerpro.com,ecfladocket@vedderprice.com,ahirschowitz@vedderprice.com

☐ **Michael Lewis Simon**

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

☐ **Kathryn C. Wanner**

wannerk@sec.gov,LeungG@SEC.GOV,simundacc@sec.gov,irwinma@sec.gov,gilliamk@sec.gov

BY U.S. MAIL:

Justin and Shannon King
26500 Paseo Infinita
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.