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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS
LLC,

Defendant.

Case No.: 2:19-cv-02188-DSF-MRW

ORDER

**(1) PRELIMINARILY
APPROVING
EISNERAMPER, LLP
SETTLEMENT; (2)
SETTING SCHEDULE; (3)
APPROVING FORM OF
FINAL APPROVAL
ORDER; AND (4)
APPROVING FORM
AND/OR LIMITATION OF
NOTICE OF MOTION
UNDER LOCAL CIVIL
RULE 66-7
(Dkt. 940)**

1 Before the Court is the Motion of Receiver for Order: (i) Preliminarily
2 Approving Settlement with EisnerAmper, LLP; (ii) Setting the Schedule for
3 Objections and Final Approval Hearing; and (iii) Approving the Form of Order
4 Finally Approving the Settlement with EisnerAmper, LLP; and (iv) Approving
5 the Form and/or Limitation of Notice of Motion Under Local Rule 66-7 (the
6 “Motion”).

7 The Motion concerns a proposed settlement among and between, on the
8 one hand, (a) Bradley D. Sharp, in his capacity as the Court-appointed Receiver
9 (the “Receiver”) for the estate of Direct Lending Investments, LLC, Direct
10 Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI
11 Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership)
12 (collectively, the “Receivership Entities”); (b) Bradley D. Sharp and Christopher
13 D. Johnson, in their capacities as Joint Official Liquidators (“JOLs”) of Direct
14 Lending Income Feeder Fund, Ltd. (in official liquidation) (“DLIFF”) (DLIFF,
15 together with the Receivership Entities, the “DLI Entities”); (c) investors in the
16 DLI Entities (“Investors”) that participated in the mediation and identified in
17 Exhibit A to the Confidential Settlement Agreement and Release (“Party
18 Investors”) (specifically, those Investors represented by Levine Kellogg Lehman
19 Schneider + Grossman LLP, The Meade Firm P.C., and Reiser Law P.C. that are
20 plaintiffs in the action *Atkins Investment Partnership, et al. v. EisnerAmper, LLP*,
21 Case No. 4:21-cv-00990 (N.D. Cal.) (the “Century Group”); those Investors
22 represented by Nystrom Beckman & Paris LLP that are plaintiffs in the action
23 *Jackson v. EisnerAmper LLP*, Case No. 20GDCV00419 (Cal. Super. Ct. L.A.
24 County) (the “Jackson Group”); those Investors represented by Bragar, Eigel &
25 Squire, P.C. that are plaintiffs in the action entitled *Baer v. EisnerAmper, LLP*,
26 Case No. 21GDCV00407 (Cal. Super. Ct. L.A. County) (the “Eigel Group”); and
27 those Investors identified in the proposed class action complaint attached as
28 Exhibit A to the Tolling Agreement as of April 30, 2021 between EisnerAmper,

1 LLP and plaintiffs Marcia Kosstrin Trust, Professional Home Improvements, Inc.
2 Retirement Plan, Michael Mendle, and Whitney Whitacre (collectively, the
3 “Class Plaintiffs”), represented by putative class counsel Ahdoot & Wolfson PC
4 and Milberg Coleman Bryson Phillips Grossman LLC); and, on the other hand,
5 (d) EisnerAmper, LLP (“Eisner”).¹ The Receiver, JOLs, the DLI Entities, the
6 Party Investors, and Eisner are referred to as the “Parties.”

7 The terms of the Settlement are contained in the Confidential Settlement
8 Agreement and Release (“Settlement Agreement”) attached as Exhibit 1 to the
9 Declaration of Bradley D. Sharp in support of the Motion. Capitalized terms not
10 otherwise defined in this order shall have the meaning assigned to them in the
11 Settlement Agreement.

12 The Receiver seeks the Court’s approval of the terms of the Settlement
13 Agreement, including entry of a final order approving the Settlement (“Final
14 Approval Order”). After reviewing the terms of the Settlement Agreement and
15 considering the arguments presented in the Motion, the Court preliminarily
16 approves the Settlement Agreement as adequate, fair, and reasonable.
17 Accordingly, the Court enters this Preliminary Approval Order to: (i) provide for
18 notice of the terms of the Settlement Agreement, including the proposed Final
19 Approval Order; (ii) set the deadline for filing objections to and opting out of the
20 Settlement Agreement and the Final Approval Order; (iii) set the deadline for
21 responding to any objection so filed; and (iv) set the date of the final approval
22 hearing regarding the Settlement Agreement and the Final Approval Order (the
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24 ¹ “Eisner” refers to EisnerAmper, LLP and Eisner Advisory Group LLC, and each
25 of their respective Subsidiaries, parents, Affiliates, divisions, joint venturers,
26 contractors, subcontractors, subrogees, offices, controlled Persons, predecessors,
27 successors, assignors, assigns, transferees, heirs, executors, shareholders,
28 owners, investors, accountants, auditors, advisors, employees, trustees,
fiduciaries, consultants, agents, representatives, nominees, attorneys, partners,
associates, counsel, managers, and members, directors and officers, in each case
individually and collectively, together with each and any of their respective
predecessors and successors in interest.

1 “Final Approval Hearing”), as follows:

2 1. Preliminary Findings on the Settlement Agreement: Based on the
3 Court’s review of the terms of the Settlement Agreement, the arguments
4 presented in the Motion, the Court preliminarily finds that the Settlement
5 Agreement is fair, reasonable, and adequate, *U.S. v. Edwards*, 595 F.3d 1004,
6 1012 (9th Cir. 2010); and resulted from vigorous, good faith, arm’s length,
7 mediated negotiations involving experienced and competent counsel. The Court,
8 however, reserves a final ruling with respect to the terms of the Settlement
9 Agreement until after the Final Approval Hearing referred to below in Paragraph
10 2.

11 2. Final Approval Hearing: The Final Approval Hearing will be held
12 before the Honorable Dale S. Fischer of the United States District Court for the
13 Central District of California, First Street Courthouse, 350 West 1st Street, Los
14 Angeles, California 90012, in Courtroom 7D, at 1:30 p.m. on November 4, 2024,
15 which is a date at least 60 calendar days after entry of this Preliminary Approval
16 Order. The purpose of the Final Approval Hearing will be to: (i) determine
17 whether the terms of the Settlement Agreement should be finally approved by the
18 Court; (ii) determine whether the Final Approval Order attached as Exhibit E to
19 the Settlement Agreement should be entered by the Court; (iii) rule on any
20 objections to the Settlement Agreement or the Final Approval Order; and (v) rule
21 on such other matters as the Court may deem appropriate.

22 3. Notice: The Court approves the form and substance of the Notice
23 of Settlement attached as Exhibit C to the Settlement Agreement, the Notices of
24 Settlement and Right of Exclusion from Settlement (the “Opt-out Notices”)
25 attached as Exhibits H and I to the Settlement Agreement, and finds that the
26 methodology, distribution, and dissemination of these notices: (i) constitute the
27 best practicable notice; (ii) are reasonably calculated, under the circumstances, to
28 apprise all Persons who may have a Released Claim against the Released Eisner

1 Entities (specifically the Interested Parties²), of the Settlement Agreement, and
2 the releases therein; (iii) are reasonably calculated, under the circumstances, to
3 apprise all Interested Parties of the right to object to the Settlement Agreement
4 and the Order Approving Settlement, and the right of Investors to opt out of the
5 Settlement, and to appear at the Final Approval Hearing; (iv) constitute due,
6 adequate, and sufficient notice; (v) meet all requirements of applicable law,
7 including the Federal Rules of Civil Procedure, the United States Constitution
8 (including Due Process), and the Rules of the Court; and (vi) will provide to all
9 Persons a full and fair opportunity to be heard on these matters. The Court further
10 approves the form and substance of the Publication Notice attached as Exhibit D
11 to the Settlement Agreement. Therefore:

12 a. The Receiver is directed, no later than seven calendar days
13 after entry of this Preliminary Approval Order, to cause the Notice of
14 Settlement in substantially the same form attached as Exhibit C to the
15 Settlement Agreement to be sent via electronic mail, first class mail, or
16 international delivery service to all Interested Parties.

17 b. The Receiver is directed, no later than seven calendar days
18 after entry of this Preliminary Approval Order, to cause the appropriate
19 Opt-out Notice(s) in substantially the same form attached as Exhibit H or
20 I to the Settlement Agreement to be sent via electronic mail, first class
21 mail, or international delivery service to all known Investors of DLI
22 Entities.

23 c. The Receiver is directed, no later than seven calendar days
24 after entry of this Preliminary Approval Order, to cause the Publication
25 Notice in substantially the same form attached as Exhibit D to the

26 _____
27 ² Interested Parties means, collectively, all parties to this SEC Action, all known
28 creditors, all known Investors of DLI Entities, all Claimants, and, to the extent
not already included in the foregoing, Opus Fund Services (USA) LLC, Opus
Fund Services (Bermuda) Ltd., Duff & Phelps, LLC, and Deloitte & Touche LLP.

1 Settlement Agreement to be published twice in the national edition of *The*
2 *Wall Street Journal*, twice in the international edition of *The New York*
3 *Times*, and once in *The Los Angeles Times*.

4 d. The Receiver is directed, no later than seven calendar days
5 after entry of this Preliminary Approval Order, to cause the Settlement
6 Agreement, the Motion, this Preliminary Approval Order, the Notice
7 (Exhibit C to the Settlement Agreement), the Opt-out Notices (Exhibits H
8 and I to the Settlement Agreement) and all exhibits and appendices
9 attached to these documents, to be posted on the Receiver's website
10 (<http://case.stretto.com/dli>).

11 e. The Receiver is directed promptly to provide the Settlement
12 Agreement, the Motion, this Preliminary Approval Order, the Notice of
13 Settlement, and the Opt-out Notices, and all exhibits and appendices
14 attached to these documents, to any Person who requests such documents
15 via e-mail to TeamDLI@stretto.com; or by telephone, by calling the
16 Stretto Administrator at 855-885-1564. The Receiver may provide such
17 materials in the form and manner that the Receiver deems most appropriate
18 under the circumstances of the request.

19 f. No less than ten calendar days before the Final Approval
20 Hearing, the Receiver shall cause to be filed with the Clerk of this Court
21 written evidence of compliance with subparts (a) through (d) of this
22 Paragraph, which may be in the form of an affidavit or declaration.

23 4. Objections and Appearances at the Final Approval Hearing: Any
24 Person who wishes to object to the terms of the Settlement Agreement or the
25 Final Approval Order, or who wishes to appear at the Final Approval Hearing,
26 must do so by emailing a written objection to TeamDLI@stretto.com, no later
27 than October 14, 2024. All objections must:
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- 1 a. contain the name, address, telephone number, and an e-mail
- 2 address of the Person filing the objection;
- 3 b. contain the name, address, telephone number, and e-mail
- 4 address of any attorney representing the Person filing the objection;
- 5 c. be signed by the Person filing the objection, or his or her
- 6 attorney;
- 7 d. state, in detail, the basis for any objection;
- 8 e. attach any document the Court should consider in ruling on
- 9 the Settlement Agreement and the Final Approval Order; and
- 10 f. if the Person objecting wishes to appear at the Final Approval
- 11 Hearing, make a request to do so.

12 The Receiver is directed to compile all objections submitted into a single
13 pleading and file them with the Court no later than October 21, 2024.

14 Any Person submitting an objection shall be deemed to have submitted to
15 the jurisdiction of this Court for all purposes of that objection, the Settlement
16 Agreement, and the Final Approval Order. Potential objectors who do not present
17 opposition by the time and in the manner set forth above shall be deemed to have
18 waived the right to object (including any right to appeal) and shall be forever
19 barred from raising such objections in this action or any other action or
20 proceeding. Persons do not need to appear at the Final Approval Hearing or take
21 any other action to indicate their approval. The Court may decline to permit
22 anyone who fails to file a written objection and request to appear at the Final
23 Approval Hearing as set forth in subparts (a) through (f) of this paragraph to
24 appear at the Final Approval Hearing. The Court will exercise discretion as to
25 whether it wishes to hear from any Person who fails to make a timely written
26 objection and request to appear.

27 5. Requests for Exclusion: Any Investor who wishes to be excluded
28 from the Settlement must send a written letter request for exclusion from the

1 Settlement by e-mail to TeamDLI@stretto.com, no later than October 14, 2024,
2 and the written letter must:

- 3 a. contain the name, address, telephone number, and e-mail
4 address of the Investor who wishes to be excluded from the Settlement;
- 5 b. be signed by the Investor who wishes to be excluded from the
6 Settlement.

7 6. Responses to Objections: Any Party to the Settlement Agreement
8 may respond to an objection filed pursuant to Paragraph 4 by filing a response in
9 this SEC Action no later than October 28, 2024. To the extent any Person
10 emailing an objection cannot be served by action of the Court's CM/ECF system,
11 a response must be served to the e-mail and/or mailing address provided by that
12 Person.

13 7. Adjustments Concerning Hearing and Deadlines: The date, time,
14 and place for the Final Approval Hearing, and the deadlines and date
15 requirements in this Preliminary Approval Order, shall be subject to adjournment
16 or change by this Court without further notice other than that which may be
17 posted by means of ECF. If no objections are timely filed or if the objections are
18 resolved prior to the Final Approval Hearing, the Court may cancel and proceed
19 without a Final Approval Hearing.

20 8. Use of Order: Under no circumstances shall this Preliminary
21 Approval Order be construed, deemed, or used as an admission, concession, or
22 declaration by or against Eisner of any fault, wrongdoing, breach or liability.
23 Neither this Preliminary Approval Order, nor the proposed Settlement
24 Agreement, or any other settlement document, shall be filed, offered, received in
25 evidence, or otherwise used in these or any other actions or proceedings or in any
26 arbitration, except to give effect to or enforce the Settlement Agreement or the
27 terms of this Preliminary Approval Order.

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1 9. Final Approval Order: The Court preliminarily approves the form
2 and substance of the Final Approval Order attached as Exhibit E to the Settlement
3 Agreement. If the Settlement is approved by the Court following the Final
4 Approval Hearing, a Final Approval Order will be entered as described in the
5 Settlement Agreement in substantially the form as Exhibit E.

6 10. Notice on the Motion: The form of notice on the Motion provided
7 to interested parties, creditors, and Investors, who are potential creditors of the
8 estate, by the Receiver (a) serving the Motion and related moving papers on all
9 parties to the action; (b) serving by mail a notice of hearing on the Motion to all
10 known creditors pursuant to Local Civil Rule 66-7; (c) posting a copy of the
11 Motion on the Receiver’s website for the case at <https://cases.stretto.com/dli>; and
12 (d) causing Bankruptcy Management Solutions dba Stretto to provide by e-mail
13 a copy of the notice of hearing on the Motion to all known Investors through its
14 e-mail service regularly used to provide notices and documents to Investors
15 pursuant to the applicable governing documents for Direct Lending Income Fund,
16 L.P. and Direct Lending Income Feeder Fund, Ltd., is hereby approved and
17 deemed sufficient notice and opportunity for hearing on the Motion under the
18 circumstances.

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IT IS SO ORDERED.

DATED: August 16, 2024



DALE S. FISCHER
United States District Judge