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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

**ORDER GRANTING
AMENDED MOTION OF
RECEIVER FOR (1)
APPROVAL OF
SETTLEMENT WITH
DELOITTE ENTITIES; (2)
ENTRY OF SCHEDULING
ORDER; AND (3) ENTRY OF
ORDER APPROVING
SETTLEMENT [DKT 784]
AND ORDER GRANTING
PRELIMINARY APPROVAL
OF DELOITTE
SETTLEMENT AND
DISTRIBUTION OF NOTICE
OF SETTLEMENT, AND
SETTING SCHEDULE FOR
FILING OBJECTIONS AND
FINAL APPROVAL HEARING**

1 This matter is before the Court on the Amended Motion for (1) Approval of
2 Settlement with the Deloitte Entities; (2) Entry of Scheduling Order; and (3) Entry
3 of Order Approving Settlement (“**Amended Approval Motion**”) filed by the
4 Receiver. Following a hearing held on June 14, 2021 on a prior motion for approval,
5 the Parties modified the Settlement and filed a Joint Status Conference Statement,
6 noting for the Court the relevant changes that were made to the Settlement. The
7 terms of the modified Settlement are contained in the Amended Confidential
8 Settlement Agreement and Release submitted as Exhibit 1 to the Declaration of
9 Bradley D. Sharp accompanying the Amended Approval Motion (“**Amended**
10 **Settlement Agreement**”) [Dkt# 784]. The Amended Approval Motion and
11 supplemental documents concern the Amended Settlement Agreement among and
12 between, on the one hand, (a) Bradley D. Sharp, in his capacity as the Court-
13 appointed Receiver (the “**Receiver**”) for the estate of Direct Lending Investments,
14 LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd.,
15 DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in
16 Receivership) (collectively, the “**DLI Receivership Entities**”); (b) Bradley D. Sharp
17 and Christopher D. Johnson, in their capacities as Joint Official Liquidators
18 (“**JOLs**”) of Direct Lending Income Feeder Fund, Ltd. (in official liquidation)
19 (“**DLIFF**”) (DLIFF, together with the DLI Receivership Entities, the “**DLI**
20 **Entities**”); (c) investors in the DLI Entities (“**Investors**”) that participated in the
21 Mediation and are identified in Exhibit A to the Amended Settlement Agreement
22 (“**Party Investors**”) (specifically, those Investors represented by The Meade Firm
23 P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP,
24 those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*,
25 Case No. 20GDCV00419 (Ca. Super. Ct.) and represented by Nystrom Beckman &
26 Paris LLP, those Investors represented by Bragar Eigel & Squire, P.C., and those
27 Investors that are putative lead plaintiffs in the action *Marcia Kosstrin Trust and*
28 *Professional Home Improvements, Inc. Retirement Plan v. Direct Lending*

1 *Investments, LLC, et al.*, Case No. 2:19-cv-02452-DSF-MRW (C.D. Cal.) and
2 represented by putative class counsel Ahdoot and Wolfson PC and Milberg Coleman
3 Bryson Phillips Grossman PLLC); and, on the other hand, (d) Deloitte & Touche,
4 LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively,
5 the “**Deloitte Entities**”). Capitalized terms not otherwise defined in this order shall
6 have the meaning assigned to them in the Amended Settlement Agreement.

7 The Receiver seeks the Court’s approval of the terms of the Amended
8 Settlement Agreement, including entry of a final order approving the Settlement in
9 the present action (the “**Order Approving Settlement**”). After reviewing the terms
10 of the Amended Settlement Agreement and considering the arguments presented in
11 the Amended Approval Motion, the Court preliminarily approves the Amended
12 Settlement Agreement as adequate, fair, and reasonable. The Court enters this
13 Scheduling Order to: (i) provide for notice of the terms of the Amended Settlement
14 Agreement, including the proposed Order Approving Settlement; (ii) set the deadline
15 for filing objections to and opting out of the Amended Settlement Agreement and
16 the Order Approving Settlement; (iii) set the deadline for responding to any
17 objection so filed; and (iv) set the date of the final approval hearing regarding the
18 Amended Settlement Agreement and the Order Approving Settlement (the “**Final**
19 **Approval Hearing**”), as follows:

20 1. Preliminary Findings on the Amended Settlement Agreement: Based
21 on the Court’s review of the terms of the Amended Settlement Agreement, the
22 arguments presented in the Amended Approval Motion and Joint Status Conference
23 Statement, and the accompanying appendices and exhibits, the Court preliminarily
24 finds that the Amended Settlement Agreement is fair, reasonable, and adequate, *see*
25 *U.S. v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010), and resulted from vigorous,
26 good faith, arm’s length, mediated negotiations involving experienced and
27 competent counsel. The Court, however, reserves a final ruling with respect to the
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1 terms of the Amended Settlement Agreement until after the Final Approval Hearing
2 referred to below in Paragraph 2.

3 The Court has reviewed the objection of Opus Fund Services (USA) LLC and
4 finds the objection unpersuasive. The settlement does not prejudice Opus in any
5 way, and nothing about how the Settlement could have been better for Opus – a party
6 generally adverse to the parties to the Settlement – affects the adequacy, fairness, or
7 reasonableness of the Settlement.

8 2. Final Approval Hearing: The Final Approval Hearing will be held in
9 the First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012, in
10 Courtroom 7D, at 1:30 p.m. on October 3, 2022. The purposes of the Final Approval
11 Hearing will be to: (i) determine whether the terms of the Amended Settlement
12 Agreement should be finally approved by the Court; (ii) determine whether the
13 Order Approving Settlement attached as Exhibit E to the Amended Settlement
14 Agreement should be entered by the Court; (iii) rule on any objections to the
15 Amended Settlement Agreement or the Order Approving Settlement; and (v) rule on
16 such other matters as the Court may deem appropriate.

17 3. Notice: The Court approves the form of Notice of Settlement attached
18 as Exhibit C to the Amended Settlement Agreement, the Notices of Settlement and
19 Right of Exclusion from Settlement (the “**Opt-out Notices**”) attached as Exhibits H
20 and I¹ to the Amended Settlement Agreement, and finds that the methodology,
21 distribution, and dissemination of these notices: (i) constitute the best practicable
22 notice; (ii) are reasonably calculated, under the circumstances, to apprise all Persons
23 who may have a Released Claim against the Released Deloitte Entities (specifically
24 the Interested Parties²), of the Amended Settlement Agreement, and the releases

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26 ¹ The Court notes that the documents sometimes inconsistently and incorrectly use the term “opt-
out” instead of the phrase “opt out.”

27 ² Interested Parties means, collectively, all parties to the SEC Action, all known creditors, all
28 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 EisnerAmper LLP.

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

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

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

21 c. The Receiver is directed, no later than seven calendar days after
22 entry of this Scheduling Order, to cause the Publication Notice in substantially the
23 same form attached as Exhibit D to the Amended Settlement Agreement to be
24 published twice in the national edition of *The Wall Street Journal*, twice in the
25 international edition of *The New York Times*, and once in *The Los Angeles Times*.

26 d. The Receiver is directed, no later than seven calendar days after

27 ³ The Court notes that citation to this case should include the initials of the assigned judge and
28 magistrate judge. In addition, there appears to be a stray mark or underscore at ECF Page ID #:
17031, line 8.

1 entry of this Scheduling Order, to cause the Amended Settlement Agreement, the
2 Amended Approval Motion and Joint Status Conference Statement, this Scheduling
3 Order, the Notice (Exhibit C to the Amended Settlement Agreement), the Opt-out
4 Notices (Exhibits H and I to the Amended Settlement Agreement) and all exhibits
5 and appendices attached to these documents, to be posted on the Receiver's website
6 (<http://case.stretto.com/dli>).

7 e. The Receiver is directed promptly to provide the Amended
8 Settlement Agreement, the Amended Approval Motion and Joint Status Conference
9 Statement, this Scheduling Order, the Notice of Settlement, and the Opt-out Notices,
10 and all exhibits and appendices attached to these documents, to any Person who
11 requests such documents via email to TeamDLI@stretto.com; or by telephone, by
12 calling the Stretto Administrator at 855-885-1564. The Receiver may provide such
13 materials in the form and manner that the Receiver deems most appropriate under
14 the circumstances of the request.

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

19 4. Opt-out Deadline: The opt-out deadline is September 6, 2022. The
20 procedure for opting out of the settlement is described in the relevant notices
21 (Exhibits H and I to the Amended Settlement Agreement).

22 5. Objections and Appearances at the Final Approval Hearing: Any
23 Person who wishes to object to the terms of the Amended Settlement Agreement or
24 the Order Approving Settlement, or who wishes to appear at the Final Approval
25 Hearing, must do so by emailing a written objection to TeamDLI@stretto.com, no
26 later than September 6, 2022.⁴ All objections must:

27 _____

28 ⁴ The Court has slightly altered the parties' proposed timelines. The parties should ensure that all notices contain the correct, specific, Court-ordered dates.

1 a. contain the name, address, telephone number, and an email
2 address of the Person filing the objection;

3 b. contain the name, address, telephone number, and email address
4 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 the
9 Amended Settlement Agreement and the Order Approving Settlement; 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 September 13, 2022.

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

26 6. Responses to Objections: Any Party to the Amended Settlement
27 Agreement may respond to an objection filed pursuant to Paragraph 4 by filing a
28 response in the SEC Action no later than September 20, 2022. To the extent any

1 Person emailing an objection cannot be served by action of the Court's CM/ECF
2 system, a response must be served to the email and/or mailing address provided by
3 that Person.

4 7. Adjustments Concerning Hearing and Deadlines: The date, time, and
5 place for the Final Approval Hearing, and the deadlines and date requirements in
6 this Scheduling Order, shall be subject to adjournment or change by this Court
7 without further notice other than that posted by means of ECF. If no objections are
8 timely filed or if the objections are resolved prior to the Final Approval Hearing, the
9 Court may cancel and proceed without a Final Approval Hearing.

10 8. Use of Order: Under no circumstances shall this Scheduling Order be
11 construed, deemed, or used as an admission, concession, or declaration by or against
12 any of the Deloitte Entities of any fault, wrongdoing, breach or liability. Neither this
13 Scheduling Order, nor the proposed Amended Settlement Agreement, or any other
14 settlement document, shall be filed, offered, received in evidence, or otherwise used
15 in these or any other actions or proceedings or in any arbitration, except to give effect
16 to or enforce the Amended Settlement Agreement or the terms of this Scheduling
17 Order.

18 **IT IS SO ORDERED.**

19 Date: July 26, 2022

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21 DALE S. FISCHER
22 UNITED STATES DISTRICT JUDGE
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