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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION – LOS ANGELES**

14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

18 DIRECT LENDING INVESTMENTS,  
19 LLC,

20 Defendant.

Case No. 2:19-cv-02188-DSF-MRW  
Hon. Dale S. Fischer

**JOINT STATUS CONFERENCE  
STATEMENT**

1 **I. INTRODUCTION**

2 On June 14, 2021, certain of the Parties<sup>1</sup> appeared before the Court on the Motion  
3 of Receiver for: (1) Approval of Settlement With Deloitte Entities; (2) Entry of  
4 Scheduling Order; and (3) Entry of Bar Order (“Motion”). Dkt. 532. At the hearing on  
5 the Motion, the Court directed questions and comments to the Parties (“Questions”),  
6 and requested “supplemental briefing as discussed on the record.” Dkt. 646. Since  
7 then, the Parties have worked diligently to respond, including by amending their  
8 Settlement Agreement<sup>2</sup> in accordance with the Court’s Questions and working with  
9 counsel to ensure that the amendments comport with U.S. and Cayman Islands law.  
10 The terms of the revised settlement agreement are contained in Exhibit 1 (“Amended  
11 Settlement Agreement”) to the Supplemental Declaration of Bradley D. Sharp filed  
12 concurrently with this Joint Status Conference Statement (“Statement”). The purpose of  
13 this Statement is to apprise the Court of the Parties’ efforts, preview the Amended  
14 Settlement Agreement, and inform the Court of the process by which the Receiver and  
15 the JOLs intend to seek court approval of the Amended Settlement Agreement.

16 As more fully explained below, the Amended Settlement Agreement fairly,  
17 reasonably, and adequately resolves potential claims between the DLI Receivership  
18 Entities, Investors, and the Deloitte Entities, representing the best possible resolution of  
19 these claims. The Receiver believes that this Settlement is an excellent result that  
20 greatly benefits Investors. The Amended Settlement Agreement now permits Investors

21 \_\_\_\_\_  
22 <sup>1</sup> The Parties include Bradley D. Sharp (“Receiver”) as the permanent receiver for the  
23 estate of defendant Direct Lending Investments LLC (“DLI”), and Direct Lending  
24 Income Fund, L.P. (“DLIF”), Direct Lending Income Feeder Fund, Ltd., DLI Capital,  
25 Inc., DLI Lending Agent, LLC, and DLI Assets Bravo, LLC and their successors,  
26 subsidiaries and affiliated entities (“DLI Receivership Entities”), Bradley D. Sharp and  
27 Christopher D. Johnson, solely in their capacities as Joint Official Liquidators (“JOLs”) of Direct Lending Income Feeder Fund, Ltd. (in official liquidation) (“DLIFF”) (DLIFF, together with the DLI Receivership Entities, the “DLI Entities”), Investors in the DLI Entities that participated in the Mediation and are identified in Exhibit A to Original Settlement Agreement (Dkt. 532-2) (“Party Investors”), and Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the “Deloitte Entities”).

28 <sup>2</sup> Capitalized terms not defined in this Statement have the meaning assigned to them in the Amended Confidential Settlement Agreement and Release.

1 to exclude themselves from the Settlement (“Opt-out Investors”) and *enhances* the  
2 rights of Third Parties<sup>3</sup> who may have claims against the Deloitte Entities. In addition,  
3 the indemnity hold-back of \$2.5 million has been eliminated.

4 In addition to amending the Settlement’s terms, the Parties and their U.S. and  
5 Cayman Islands counsel have worked diligently to develop a process for seeking  
6 approval of this Settlement by both this Court and the Grand Court of the Cayman  
7 Islands (“Grand Court”). That process, described in detail below, contemplates robust  
8 procedures before both courts to ensure that Investors and other interested parties are  
9 notified of the terms of the Settlement and provided with ample opportunity to object to  
10 the Settlement and/or opt out of it. The Receiver intends to file an Amended Motion for  
11 Approval of Settlement Agreement with the Deloitte Entities (“Amended Approval  
12 Motion”) requesting the Court to preliminarily approve the Amended Settlement  
13 Agreement, establish the form and content of the notices and the method and manner of  
14 service and publication, and set a hearing to consider the final approval of the Amended  
15 Settlement Agreement.

## 16 **II. KEY AMENDMENTS TO SETTLEMENT AGREEMENT**

17 Many of the Court’s Questions were directed toward the Settlement’s impact on  
18 the rights of Investors and Third Parties. The Parties address each of the Court’s  
19 Questions below, but wish to highlight four principal amendments that safeguard the  
20 rights of DLI Investors and Third Parties:

21 *First*, the Amended Settlement Agreement provides all Investors with the ability  
22 to opt-out, which means that claims of Opt-out Investors will neither be released nor  
23 barred. Ex. 1, Sections 1.17-1.20; Ex. B to Amended Settlement Agreement  
24 (“Scheduling Order”) at 3; Exs. H-I to the Amended Settlement Agreement (“Opt Out  
25 Notices”). The Amended Settlement Agreement provides for robust notice procedures  
26 that ensure Investors are fully informed of this right, including both direct notice and

27 <sup>3</sup> “Third Party” means a nonparty to this Agreement who has been or may be sued by  
28 any of the Claimants or Participating Investors for claims relating to, or in connection  
with the DLI Entities.

1 that the Receiver will publish the Notice multiple times in various domestic and  
2 internationally-available newspapers. *See* Scheduling Order at 3-5. These procedures  
3 address the Court’s concerns regarding fairness to Investors, because each Investor can  
4 decide for itself whether the Settlement is fair. Opt-out Investors will not be bound by  
5 the Settlement’s terms, will retain any right they may have to pursue a claim against the  
6 Deloitte Entities, and may also object to the Amended Settlement Agreement (an ability  
7 typically lost upon opting out of Rule 23 class actions). As further reassurance to the  
8 Court, the Receiver implemented similar notice procedures for Investors to submit  
9 claims; 100% of the Investors that the Receiver’s team calculated as having suffered a  
10 loss submitted a claim form. *See infra*, Questions 1, 7.

11 *Second*, the Parties have significantly narrowed the bar order they request from  
12 the Court. Whereas the prior requested bar order would have applied to claims by Third  
13 Parties, the Amended Settlement Agreement only provides for an order barring claims  
14 by the parties to the Settlement and Investors who do not exclude themselves from the  
15 Settlement (“Participating Investors”). Further, the requested bar order is limited both  
16 by the nature of claim asserted (pertaining only to claims based on the professional  
17 services provided by the Deloitte Entities to the DLI Entities); and by jurisdiction  
18 (pertaining only to claims asserted in any state or federal court, arbitration proceeding,  
19 or other forum in the United States will be barred). *See* Ex. 1, Section 4.1(b); Ex. E to  
20 the Amended Settlement Agreement (“Order Approving Settlement”) at 9.

21 Additionally, the Amended Settlement Agreement provides for the release of the  
22 Receiver’s, the JOLs’, DLI Entities’, Party Investors’ (“Releasing Claimants”) claims  
23 against the Deloitte Entities in addition to the claims of DLIF Investors that do not  
24 exclude themselves from the Settlement (“Participating DLIF Investors”). *See* Ex. 1,  
25 Sections 1.19, 4.1(a); Order Approving Settlement at 6-7.<sup>4</sup>

26 Further, the Amended Settlement Agreement provides additional protections for

27 <sup>4</sup> In light of special circumstances caused by the application of Cayman Islands law and  
28 the operation of the Cayman liquidation, the Amended Settlement Agreement no longer  
provides for the release of claims by DLIFF Investors. *See* Ex. 1, 4.1(a).

1 Third Parties by obligating Releasing Claimants and Participating DLIF Investors to  
2 reduce any verdict or judgment obtained from any Third Party by the proportionate fault  
3 of the Deloitte Entities. *See* Ex 1, Section 4.1(d). These amendments address the  
4 objections by Opus Fund Services (USA) LLC (“Opus”), Quarterspot, Inc., and certain  
5 DLI officers, who now stand only to benefit from the Settlement. *See infra*, Questions  
6 2, 9, 12.

7 *Third*, the Amended Settlement Agreement is not conditioned upon determination  
8 by the court in *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super.  
9 Ct.), that the *Jackson* plaintiffs and the Deloitte Entities entered into the agreement in  
10 good faith pursuant to California Code of Civil Procedure Section 877.6. This  
11 amendment resolved several comments the Court made regarding sequencing of the  
12 Motion with respect to the Court’s consideration of the Settlement and the impact that  
13 such order might have on the rights of Third Parties. *See infra*, Questions 4-5.

14 *Fourth*, the Parties removed the indemnity hold-back provision, which required  
15 the Receiver to withhold \$2.5 million from the Settlement Amount to fund the Deloitte  
16 Entities’ defense against any claims that may be asserted by Releasing Claimants. The  
17 removal of this provision provides an additional and unconditional \$2.5 million for  
18 distribution. *See, infra*, Question 6.

19 In sum, the Parties believe these amendments address the Court’s primary  
20 concerns with the Settlement.

21 Following the June 14, 2021 hearing, the Parties engaged in extensive  
22 negotiations and made material modifications to the Settlement. As a result of these  
23 developments and the impact of the Settlement on the rights of DLIFF Investors, the  
24 JOLs, upon privileged advice of Cayman Islands counsel, concluded it was necessary to  
25 seek sanction (approval) from the Grand Court to enter into the Amended Settlement  
26 Agreement. Thus, the Amended Settlement Agreement now calls for an immediate  
27 application to the Grand Court (“Summons”) seeking an order holding that the JOLs  
28 have sanction to enter into the Amended Settlement Agreement (“Sanction Order”). *See*

1 Ex. 1, Section 2.2. Further, the Amended Settlement Agreement provides that the  
2 Receiver will request hearing on the Amended Approval Motion more than sixty days  
3 from the date of filing the Amended Approval Motion to allow for the Grand Court to  
4 enter the Sanction Order before the hearing in this action. *See* Ex. 1, Section 2.3(a)(vi).<sup>5</sup>  
5 The intent of these modifications is to ensure that the Court has full and final authority  
6 to approve the Amended Settlement Agreement in its entirety at the time of the  
7 preliminary approval hearing.

8 As amended, the Settlement will provide in the near term a substantial recovery  
9 for distribution without the risk and cost of protracted litigation, while avoiding  
10 prejudice to Third Parties or Opt-out Investors. The Amended Settlement Agreement is  
11 fair, reasonable, and adequate, *U.S. v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010),<sup>6</sup>  
12 and should, upon notice and opportunity to be heard, be approved.

13 **A. Amendments concerning the Court’s specific Questions:**

14 **Question No. 1:** The Court expressed concern that the Settlement  
15 Agreement did not provide investors with the ability to opt out of the Settlement.  
16 Motion Hearing Transcript (“Tr.”) 7:13-17.

17 **Response to Question No. 1:** As noted above, the Court’s Question has  
18 been addressed by the Parties’ amendments to the Settlement Agreement, which now  
19 provide Investors with the right to exclude themselves from participation in the  
20 Settlement. *See* Ex. 1, Sections 1.16-1.17; Opt-out Notices. The Amended Settlement  
21 Agreement includes robust notice procedures that will ensure Investors are fully  
22 informed of their right to opt out, and how, to exercise this right. *See* Scheduling Order  
23 at 3-4. In addition to a general notice that will be provided to all Interested Parties,  
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25 <sup>5</sup> In the event that the Grand Court does not enter the Sanction Order within sixty days  
26 from the day on which the JOLs file the Summons, all Parties shall have the right to  
27 withdraw by providing thirty days written notice of withdrawal. *See* Ex. 1, Section  
28 2.5(b).

<sup>6</sup> *See Secs. and Exch. Comm’n v. Ruderman*, No. CV 09-02974 ODW JCX, 2011 WL 5857452, at \*4 (C.D. Cal. Nov. 21, 2011) (relying on *U.S. v. Edwards* to analyze approval of settlement with SEC receivership entity).

1 DLIF and DLIFF Investors will each receive appropriate versions of the Opt-out Notice  
2 informing the Investors of the details of the Amended Settlement Agreement, their  
3 options with respect to opting out of the Settlement—taking no action and participating  
4 in the Settlement, or objecting to the Settlement—and the ramifications of each option.  
5 As is standard in class action settlements, the Deloitte Entities will have the right to  
6 withdraw from the Settlement if a certain ceiling of exclusion requests is reached. *See*  
7 Ex. 1, Section 2.6. Additional rights have been provided to Investors, in that Investors  
8 who opt out are not prevented from objecting to the Amended Settlement Agreement.  
9 While this right is typically not provided to Opt-out Investors in the class action context,  
10 the Parties are providing it here to ensure that the Court is apprised of all objections (if  
11 any) to the Amended Settlement Agreement.

12 **Question No. 2:** The Court requested clarity on Section 5.3(c) in the  
13 Settlement Agreement—which required the Receiver and JOLs to reduce any recovery  
14 they obtained against a Third Party by any amounts attributable to the fault of the  
15 Deloitte Entities—and whether it addressed the objections raised by certain non-party  
16 DLI officers (Dkt. 606). Tr. 7:18-21.

17 **Response to Question No. 2:** The Court’s concerns regarding the scope of  
18 Section 5.3(c) and its implications for interested non-party DLI officers have been  
19 addressed by the Parties’ decision to remove the Third Party claims bar and related  
20 provisions from the Amended Settlement Agreement. The Amended Settlement  
21 Agreement now only releases Releasing Claimants’ and Participating DLIF Investors’  
22 claims against the Deloitte Entities, and not Third Party claims. *See* Ex. 1, Section  
23 4.1(a) (“Each Releasing Claimant and each Participating DLIF Investor . . . fully,  
24 finally, and forever release, covenant not to sue, and discharge each of the Released  
25 Deloitte Entities from any and all Released Claims[.]”); Section 1.23 (“Released Claims  
26 means to the fullest extent that the law permits their release, all past, present and future  
27 claims...of the Claimants or Participating DLIF Investors [.]”). Such releases are  
28 consistent with established law in equitable receivership proceedings and the class

1 action context (which bears many similarities to the structure of the Settlement,  
2 including the procedural protections afforded to investors). *See, e.g., Secs. and Exch*  
3 *Comm’n v. Alleca*, No. 12-cv-03261-ELR (N.D. Ga. Nov. 20, 2017), ECF No. 145-1  
4 (“[T]he Receiver . . . on behalf of himself, . . . the Receivership Entities and all Third  
5 Parties for which the Receiver has authority, releases, acquits, and forever discharges  
6 Alexandria from the Released Claims.”); No. 12-cv-03261-ELR (N.D. Ga. Oct. 28,  
7 2019), ECF No. 177 (approving settlement); *see Fowler v. Union P. R.R. Co.*, No.  
8 EDCV172451JGBSPX, 2019 WL 13038410, at \*3 (C.D. Cal. Jan. 7, 2019) (approving  
9 settlement providing that “[e]ach Class Member, except those who timely Opt-Out, will  
10 be bound to the release of Released Claims as a result of the Settlement.”); *Monaco v.*  
11 *Bear Stearns Residential Mortg. Corp.*, No. 209CV05438SJOJCX, 2014 WL 12564085,  
12 at \*3 (C.D. Cal. Feb. 4, 2014) (approving settlement providing that “every Class  
13 Member who is not a Successful Opt-Out [is] permanently enjoined and barred from  
14 commencing or prosecuting any action asserting any matter within the scope of the  
15 Release.”).

16 Further, the Amended Settlement Agreement only requests an order from the  
17 Court barring Releasing Claimants and Participating Investors from prosecuting or  
18 seeking monetary or any other relief in state or federal court, arbitration proceeding, or  
19 other forum in the United States against the Released Deloitte Entities with respect to  
20 all claims based on the professional services provided by the Deloitte Entities to the  
21 DLI Entities. *See* Ex. 1, Section 4.1(b); Order Approving Settlement at 7. As the  
22 Amended Settlement Agreement no longer releases or bars the claims of Third Parties  
23 or Opt-out Investors, this contemplated amendment promotes equity and protects their  
24 rights. Similar bar orders have been entered often under a receivership court’s equitable  
25 authority. *See, e.g., Secs. and Exch. Commn. v. Aequitas Mgt., LLC*, 3:16-CV-00438-  
26 JR, 2020 WL 7318305, at \*1 (D. Or. Nov. 10, 2020) (finding that entry of contribution  
27 claims bar was appropriate and that bar orders “facilitate[] settlement, promote[]  
28 equitable recoveries by creditors, and maximize[] assets available to creditors.”); *Sec.*



1 *and Exch. Comm'n v. Sunwest Management, Inc.*, No. 6:09-cv-06056-AA (D. Or. Sept.  
2 20, 2011), ECF No. 2179 (barring “any and all claims against the Settling Brokers for  
3 damages arising from their conduct related to the activities of Sunwest Management.”).

4 Consistent with this amendment, the Amended Settlement Agreement further  
5 protects the rights of Third Parties by obligating Releasing Claimants and Participating  
6 DLIF Investors to reduce any verdict or judgment obtained from any Third Party by an  
7 amount found to result from the Deloitte Entities’ proportionate fault, if any, to the  
8 extent permissible under the law governing such verdict or judgment (“Other Governing  
9 Law”). *See* Ex. 1, Section 4.1(d); Order Approving Settlement at 7 Such provisions are  
10 commonplace in the class action context, and are routinely endorsed by courts in this  
11 Circuit. *See* Judgment Approving Class Action Settlement at 5-6, *In re Snap Inc. Secs.*  
12 *Litig.*, No. 2:17-cv-03679-SVW-AGR (C.D. Cal. Mar. 9, 2021), ECF No. 398  
13 (including proportionate fault offset provision); *Mild v. PPG Indus.*, No. 18-cv-04231-  
14 RGK-JEM, 2019 WL 9840627, at \*4 (C.D. Cal. Nov. 22, 2019) (same); *see also*  
15 *Rieckborn v. Velti PLC*, No. 13-CV-03889-WHO, 2015 WL 468329, at \*15 (N.D. Cal.  
16 Feb. 3, 2015) (same); *see generally Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1231-32  
17 (9th Cir. 1989) (holding that “allowing only proportional liability” for non-settling  
18 defendants “comports with the equitable purpose of contribution”).

19 The amendments outlined above are thus consistent with established law, and  
20 ensure that Third Parties are treated equitably under the terms of the Amended  
21 Settlement Agreement. They were necessary conditions for the Deloitte Entities so that,  
22 absent the prior request for a bar order as to Third Party claims, the Deloitte Entities  
23 were protected in actions brought by Releasing Claimants and Participating DLIF  
24 Investors. The exposure of the Deloitte Entities will be limited in such actions, as the  
25 Settlement Agreement prevents Third Parties from paying more in judgment than their  
26 proportionate fault relative to the Deloitte Entities (to the extent Other Governing Law  
27 does not require some other method of judgment reduction), eliminating any need to  
28 bring claims for contribution against the Deloitte Entities.

1           **Question No. 3:** The Court asked why the Parties did not utilize the class  
2 action mechanism to resolve the proceedings. Tr. 7:22-8:1.

3           **Response to Question No. 3:** The Parties believe that resolution of the  
4 Receiver’s, JOLs’, Party Investors’, and Participating Investors’ potential claims against  
5 the Deloitte Entities (as well as any claims the Deloitte Entities may assert) is best  
6 achieved through the terms and provisions of the Amended Settlement Agreement and  
7 not by utilizing a traditional class action mechanism. First, there has been no class  
8 action lawsuit pertaining to the DLI Entities filed against the Deloitte Entities in state or  
9 federal court. In addition, any putative class might be difficult to certify because,  
10 among other things, both state and federal law would require individualized proof of  
11 reliance. *See Basic Inc. v. Levinson*, 485 U.S. 224, 242 (1988) (recognizing that  
12 individualized proof of reliance creates difficulties proceeding as a class, because  
13 “individual issues then would . . . overwhelm[ ] the common ones”); *see also Desai v.*  
14 *Deutsche Bank Sec. Ltd.*, 573 F.3d 931, 942 (9th Cir. 2009) (affirming order denying  
15 class certification on the ground that “Investors would have to prove reliance on an  
16 individual basis because they could not prove it class-wide”); *Townsend v. Monster*  
17 *Beverage Corp.*, 303 F. Supp. 3d 1010, 1048 (C.D. Cal. 2018) (denying motion for class  
18 certification because “there are significant individualized issues related to proof of  
19 reliance,” which are “enough to defeat” the motion); *In re Hyundai and Kia Fuel Econ.*  
20 *Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (holding that settlement-only class certification  
21 must still satisfy necessary prerequisites under Rule 23).

22           Second, the Receiver is uniquely positioned to represent the interests of all  
23 Investors. The Receiver is a representative of this Court, appointed to act on behalf of  
24 not only the Receivership Estate, but also for the benefit of Investors. *See N. Am.*  
25 *Broad., LLC v. U.S.*, 306 F. App’x. 371, 373 (9th Cir. 2008) (“A court-appointed  
26 receiver is an officer of the court, appointed on behalf and for the benefit of all the  
27 parties having an interest in the property.”); *Ward v. Comm’r*, 224 F.2d 547, 550 (9th  
28 Cir. 1955) (same); *Secs and Exch. Commn. v. Total Wealth Mgt., Inc.*, No. 15-CV-226-

1 BAS-RNB, 2018 WL 3456007, at \*6 (S.D. Cal. July 18, 2018) (“The Receiver acts on  
2 behalf of the best interests of the investors of the Receivership Entities, who were  
3 harmed.”); *Secs. and Exch. Commn. v. Schooler*, No. 3:12-CV-2164-GPC-JMA, 2015  
4 WL 1510949, at \*3 (S.D. Cal. Mar. 4, 2015) (holding that a Receiver owes a “fiduciary  
5 duty to the owners of the property under his care”). Among other things, the Receiver  
6 is empowered to compromise the Receivership Estate’s claims in the interest of  
7 maximizing estate assets for distribution to investors. *See* Dkt. 10 (Preliminary  
8 Injunction Order and Order Appointing Permanent Receiver) (holding that the Receiver  
9 is empowered “to take such action as is necessary and appropriate to preserve and take  
10 control of and to prevent the dissipation, concealment, or disposition of any assets.”).  
11 The Amended Settlement Agreement enables the Receiver to carry out his duties.

12 In this case, both the Receiver and Investors have potential claims against the  
13 Deloitte Entities. As the Court is aware, Claimants include Investors who elected to  
14 participate directly in the Settlement, and the Amended Settlement Agreement allows  
15 all Investors to benefit and be bound by its terms.

16 In response to the Court’s Questions, the Parties drafted the Amended Settlement  
17 Agreement to include the same protections afforded to parties in the class action  
18 context—principal among them, the right of Investors not only to participate but to  
19 exclude themselves from the Settlement. *See* Ex. 1, Sections 1.16-1.17; Scheduling  
20 Order at 4. The Amended Settlement Agreement further affords Investors class action  
21 protections, including: 1) robust notice procedures designed to inform Investors of the  
22 Settlement and their right to exclude themselves from the Settlement, *see* Opt-out  
23 Notices; Ex. C to the Amended Settlement Agreement (“Notice of Amended Settlement  
24 Agreement”); 2) the right of Investors to submit objections to the Settlement, *see*  
25 Scheduling Order at 5-6; and 3) the opportunity for Investors to be heard at the Final  
26 Approval Hearing, *see* Scheduling Order at 4. *See In re Hyundai*, 926 F.3d at 566  
27 (holding that procedural safeguards “necessary to bind absent class members includ[e]  
28 notice, the opportunity to be heard, the opportunity to opt out, and adequate

1 representation”).

2 The procedures and mechanisms incorporated in the Amended Settlement  
3 Agreement will best resolve this matter in the context of these facts. *See Secs. and*  
4 *Exch. Commn. v. Dean Properties, LLC*, 828 F. App’x. 374, 375 (9th Cir. 2020)  
5 (citation omitted) (“A district court overseeing an SEC enforcement action has ‘broad  
6 equitable powers . . . to shape equitable remedies to the necessities of [the] particular  
7 case[ ].’”); *Secs. and Exch. Commn. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)  
8 (“The power of a district court to impose a receivership or grant other forms of ancillary  
9 relief . . . derives from the inherent power of a court of equity to fashion effective  
10 relief.”).

11 **Question No. 4:** The Settlement Agreement included a condition that the  
12 state court in the action brought by the Jackson Group enter an order pursuant to Section  
13 877.6 of the California Code of Civil Procedure determining the good faith nature of the  
14 Jackson Group’s settlement with the Deloitte Entities, and barring contribution claims  
15 by any alleged joint tortfeasors against the Deloitte Entities (“Good Faith Settlement  
16 Determination”). *See* Dkt. 532-2, Section 2.2(c). The Court inquired as to why entry of  
17 that order should not precede the Court’s assessment of the Settlement Agreement. Tr.  
18 8:14-20, 9:5-9, 17:10-15.

19 **Response to Question No. 4:** The former Settlement Agreement  
20 contemplated a procedure, similar to that employed in Rule 23 class actions, by which  
21 the Court would preliminarily approve the Settlement, authorize publication of notices,  
22 and establish deadlines culminating in a fairness hearing to finally approve the  
23 Settlement. The Parties contemplated filing the motion for Good Faith Settlement  
24 Determination after preliminary approval (but before final approval) because the  
25 Settlement was negotiated by the Claimants for the benefit of all DLI Investors, not just  
26 the Jackson Group, which comprises approximately 2% of all DLI Investors.

27 Recognizing that the prior structure could create a “chicken and egg” problem,  
28 the Amended Settlement Agreement, however, is not conditioned upon a Good Faith

1 Settlement Determination by the state court. *See* Ex. 1, Section 2.4.<sup>7</sup> Accordingly,  
2 when the Parties appear before the Court at the preliminary approval hearing (which  
3 will necessarily be *after* the Grand Court issues the Sanction Order) there will be no  
4 question that the Court has full and final authority to approve and make effective the  
5 Amended Settlement Agreement.

6 **Question No. 5:** As a result of the provision in the Settlement Agreement  
7 requiring entry of a Good Faith Settlement Determination in state court, which would  
8 bar claims by alleged joint tortfeasors, the Court wanted more information on “potential  
9 third-party claims” to assess “how concerned” it should be about the Good Faith  
10 Settlement Determination requirement. Tr. 9:10-13.

11 **Response to Question No. 5:** As noted above, the Settlement, as  
12 amended, is not conditioned on the entry of (1) an order barring Third Party claims, or  
13 (2) a Good Faith Settlement Determination in the *Jackson* state court case, thus  
14 addressing the Court’s Questions. *See* Ex. 1, Section 2.4; Order Approving Settlement.

15 Notwithstanding the above, the Parties understand that the only Third Parties that  
16 have either been sued or threatened with claims by the Claimants (and by virtue of those  
17 claims or threatened claims arguably may have claims for contribution against the  
18 Deloitte Entities) are: 1) Opus Fund Services (USA) LLC (“Opus”), DLI’s fund  
19 administrator, 2) Duff & Phelps, LLC, DLI’s valuation specialist, 3) EisnerAmper LLP,  
20 DLI’s predecessor external auditor, 4) QuarterSpot, Inc., a DLI counterparty, and 5)  
21 certain DLI officers. Among these Third Parties, only Opus has actually filed claims  
22 against certain of the Deloitte Entities. *See* Opus Fund Services (USA) LLC’s Cross-  
23 Complaint, *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super.  
24 Ct. Apr. 20, 2021). Still, Opus and all other Third Parties stand to benefit from the

25 <sup>7</sup> While the Parties decided to remove this condition, no party to the action brought by  
26 the Jackson Group is prevented from moving for entry of such an order. *See id.*, Section  
27 2.4; *PacifiCare of California v. Bright Med. Associates, Inc.*, 198 Cal. App. 4th 1451,  
28 1459 (2011) (quoting Cal. Civ. Proc. Code § 877.6(a)(1)) (“Any party to an action in  
which it is alleged that two or more parties are joint tortfeasors . . . shall be entitled to a  
hearing on the issue of the good faith of a settlement entered into by the plaintiff or  
other claimant and one or more alleged tortfeasors . . .”).

1 Settlement because the Amended Settlement Agreement obligates Releasing Claimants  
2 and Participating DLIF Investors to reduce any verdict or judgment obtained against  
3 them by an amount found to result from the Deloitte Entities' proportionate fault, if any,  
4 to the extent permissible under Other Governing Law. In addition, as stated above, the  
5 Amended Settlement Agreement does not ask the Court to bar any claims by Third  
6 Parties, and reiterates the Deloitte Entities' willingness to grant mutual releases to any  
7 Third Party that releases the Deloitte Entities in connection with settlements of claims  
8 by the Claimants.

9 In sum, these amendments reflect Deloitte's core interest in global peace. The  
10 proportionate fault reduction included in the Amendment Settlement Agreement should  
11 obviate the need for any Third Party to pursue claims for contribution from the Deloitte  
12 Entities, and the Deloitte Entities will release any Third Party that releases them from  
13 such claims.

14 **Question No. 6:** The Court expressed concern that the indemnity  
15 provision in the Settlement Agreement potentially reduced the Net Settlement Amount  
16 and unfairly benefited the Deloitte Entities. Tr. 9:14-20.

17 **Response to Question No. 6:** This Question has been addressed by  
18 eliminating any indemnity provision that would impact the Net Settlement Amount  
19 available to Investors. See Ex. 1.

20 **Question No. 7:** The Court expressed concerns that the proposed  
21 newspaper Notice (Exhibit D) (Dkt. 532-2) was not sufficiently informative to  
22 communicate the broad reach of the Settlement, and questioned the adequacy of  
23 publishing the newspaper Notice only once. Tr. 11:22-25, 12:1-3.

24 **Response to Question No. 7:** Subject to the Court's views on the  
25 sufficiency of the Parties' contemplated amendments to the Settlement Agreement  
26 discussed in this Statement, the Parties have revised the newspaper Notice to address  
27 the Court's concerns. Under the amended notice procedures, the newspaper Notice will  
28 be published twice in both the national edition of *The Wall Street Journal*, and the

1 international edition of *The New York Times* and once in *The Los Angeles Times*. See  
2 Scheduling Order at 4; Ex. D to Amended Settlement Agreement (“Publication  
3 Notice”). These amended procedures will further ensure that Investors are adequately  
4 informed of their right to exclude themselves from participating in the Settlement and  
5 will include links to the Receiver’s website for full access to the Amended Settlement  
6 Agreement and its associated filings and exhibits. See Publication Notice. Further,  
7 these publication notices are in addition to direct notices because the Scheduling Order  
8 still provides that the Receiver will send via email, first class mail, or international  
9 delivery the Notice of Amended Settlement Agreement to all Interested Parties and will  
10 post the Notice to his website. The appropriate Opt-out Notices will similarly be sent  
11 via email, first class mail, or international delivery to all Investors. As noted above,  
12 when the same process was used to send out claim forms to investors, 100% of  
13 investors that the Receiver’s team calculated as having suffered a loss returned claim  
14 forms to Stretto.

15 **Question No. 8:** The Court expressed concerns over proposed procedures  
16 that required objectors to file individual objections with the Court and separately mail  
17 them to the Parties. The Court suggested that all objections could be emailed to a  
18 central location and consolidated into a single filing. Tr. 12:4-11, 14:19-25, 15:1. The  
19 Court also expressed concern that a written objection was required in order for an  
20 objector to appear before the Court at the Final Approval Hearing. Instead, the Court  
21 was inclined to leave that determination to the Court’s discretion. *Id.* 12:12-25, 13:1-2.

22 **Response to Question No. 8:** Consistent with the Court’s suggestion, the  
23 Parties have amended the procedures in the Proposed Scheduling Order so that  
24 objections may be emailed to Stretto, the Receiver’s claim administrator who he has  
25 been successfully using for notice and service assistance. Objectors are no longer  
26 required to file or mail their objections to counsel for the Receiver, the Deloitte Entities,  
27 or the Party Investors. The Receiver will consolidate all the objections into a single  
28 filing for the Court. See Scheduling Order at 5.

1           Additionally, objectors are no longer required to file written objections in order to  
2 appear at the Final Approval Hearing. *See* Scheduling Order at 5-6. Instead, the  
3 Scheduling Order now provides that objectors may appear, subject to the Court’s  
4 exercise of discretion as to whether the Court wishes to hear from any Person who fails  
5 to make a timely written objection. *See id.*

6           **Question No. 9:** The Court requested information on any claims the  
7 Receiver has against Third Parties—the value of which would be adversely impacted by  
8 the Third Party claims subject to the Proposed Bar Order. Tr. 13:3-9.

9           **Response to Question No. 9:** As noted above, the Question has been  
10 addressed by the fact that the Amended Settlement Agreement no longer requires entry  
11 of an order barring Third Party claims. *See* Ex. 1, Section 4.1(b).

12           **Question No. 10:** The Court requested an explanation on Section 2.2(b)(i)  
13 of the Settlement Agreement regarding the Proposed Bar Order, which provided that  
14 “any Investor that receives any portion of the Settlement Fund or other future  
15 distribution from any of the DLI Entities whether directly or indirectly through the  
16 Receiver or JOLs, including in any distribution of the DLI Entities’ assets after the  
17 Execution Date, shall be deemed to release all Released Claims against the Deloitte  
18 Entities.” Tr. 13:13-16; Dkt. 532-2, Section 2.2(b)(i).

19           **Response to Question No. 10:** The Parties removed this provision from  
20 the Amended Settlement Agreement, which now provides that:

- 21           • Only Releasing Claimants and Participating DLIF Investors will release  
22           their claims against the Deloitte Entities. *See* Ex. 1, Section 1.19, 4.1(a).
- 23           • Only Releasing Claimants and Participating Investors will be barred  
24           from prosecuting or seeking monetary or other relief in any state or  
25           federal court, arbitration proceeding, or other forum in the United States  
26           against the Released Deloitte Entities. *See* Ex. 1, Section 4.1(b).
- 27           • Opt-out Investors will not release their claims against the Deloitte  
28           Entities nor will shall such claims be barred.



- Only Claimants and Participating DLIF Investors shall be eligible to receive any portion of the Settlement Amount from the Receiver. The distribution of the Settlement Amount to DLIFF Investors will be determined in accordance with Cayman Islands law. *See* Ex. 1, Section 2.9.

**Question No. 11:** The Court questioned why the Proposed Bar Order contained a proposed finding that all Parties had complied with Federal Rule of Civil Procedure 11. Tr. 13:17-22.

**Response to Question No. 11:** The Parties submit that this finding was intended only to avoid any doubt that the subject litigation was conducted in good faith. Nevertheless, the revised Order Approving Settlement, which has replaced the previous Proposed Bar Order, no longer contains this proposed finding.

**Question No. 12:** The Court expressed concern over the scope of the Proposed Bar Order, finding that it was too broad and could potentially prohibit barred Persons from cooperating in federal investigations. Tr. 14:2-8.

**Response to Question No. 12:** The Order Approving Settlement has narrowed the scope of the claims bar, and prevents Releasing Claimants and Participating Investors from “prosecuting, against any of the Deloitte Entities... any action . . . in any state or federal court, arbitration proceeding, or other forum in the United States...that in any way relates to, is based upon, arises from, or is connected with the professional services provided by the Deloitte Entities to the DLI Entities.” *See* Order Approving Settlement at 7; *Compare* Dkt. 532-2, Ex. E at 10 (enjoining barred Persons from “instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting” Released Claims). This amendment significantly narrows the scope of prohibitions imposed on Releasing Claimants and Participating Investors. The Parties also added a provision, for the avoidance of doubt, that allows Releasing Claimants and Participating Investors to cooperate with

1 governmental investigations to the extent such cooperation would conflict with the  
2 terms of the Amended Settlement Agreement. *See* Order Approving Settlement at 7  
3 (“Nothing in the foregoing shall preclude any Releasing Claimant or Participating  
4 Investor from cooperating with governmental authorities in a lawful manner or  
5 responding to a valid subpoena.”).

6 **Question No. 13:** The Court directed the Parties to use simplified  
7 language and avoid overly legalist words in any proposed orders related to the  
8 Settlement Agreement. Tr. 14:9-18. The Parties hope they have improved the proposed  
9 orders accordingly.

10 **Response to Question No. 13:** The Parties have amended the proposed  
11 orders doing their best to be consistent with the Court’s preference. *See* Scheduling  
12 Order; Order Approving Settlement.

13 **B. Additional Modifications.**

14 Other than the above modifications relating to the Court’s Questions, the Parties  
15 have made the following substantive changes that they wish to highlight to the Court.

16 **Sanction from the Grand Court:** The Amended Settlement Agreement  
17 requires the JOLs to seek sanction (approval) of the Amended Settlement Agreement by  
18 filing the Summons in the Grand Court. *See* Ex. 1, Section 2.2. The procedures for  
19 obtaining the requested Sanction Order from the Grand Court are specified in Section  
20 2.2(a) to the Amended Settlement Agreement. Within one day after the Summons has  
21 been filed by the JOLs with the Grand Court, the Receiver is to submit the Amended  
22 Approval Motion. *See* Ex. 1, Section 2.3(a)(i). The Amended Approval Motion will be  
23 noticed for at least sixty days after the Amended Approval Motion is filed with this  
24 Court to allow for the Grand Court to enter the Sanction Order. *See* Ex. 1, Section  
25 2.3(vi). In the event that the Summons has not been decided by the date set for the  
26 preliminary approval hearing on the Amended Approval Motion, the Receiver will  
27 request that the hearing be postponed for a period of time sufficient to allow the Grand  
28 Court to issue a decision on the Summons. *Id.* These procedural protections are meant

1 to ensure that the Grand Court issues the Sanction Order *before* the Parties appear at the  
2 preliminary approval hearing. In the event the Sanction Order is not entered by the  
3 Grand Court as described in Section 2.2 of the Amended Settlement Agreement or the  
4 Sanction Order does not become Final, the Receiver shall withdraw the Amended  
5 Approval Motion. *Id.*

6 If the Grand Court does not enter the Sanction Order within sixty days from the  
7 date on which the JOLs file the Summons, all Parties have the right to withdraw from  
8 the Amended Settlement Agreement by providing thirty days written notice of  
9 withdrawal to the other Parties. In the event the Grand Court enters the Sanction Order  
10 within the thirty days withdrawal notice period, the notice of withdrawal shall become  
11 ineffective, and all Parties' right to withdraw from the Amended Settlement Agreement  
12 shall expire.

13 **Distribution to DLIF Participating Investors:** The Receiver, in  
14 consultation with his advisers, has determined that rather than distribute those proceeds  
15 of the Settlement allocated to DLIF to Participating DLIF Investors under the Rising  
16 Tide Methodology under the previously-approved Distribution Plan (Dkt. 321-2), the  
17 better course is to distribute the proceeds to Participating DLIF Investors on a *pro rata*  
18 basis based on their Net Investment amount.<sup>8</sup> The Receiver intends to file a motion  
19 requesting Court authority to modify the distribution methodology solely with respect to  
20 distribution of the Deloitte settlement proceeds to DLIF Investors to be heard  
21 concurrently with the Amended Motion. The Receiver believes switching to a *pro rata*  
22 methodology for purposes of this Settlement will increase the number of DLIF Investors

23 <sup>8</sup>“Net Investment” is defined in the Distribution Plan as a “DLIF Investor’s Total  
24 Investment less Pre-Receivership Returns.” “Total Investment” is defined as the “total  
25 amount of cash invested by a DLIF Investor.” [Dkt. 321-2.] “Pre-Receivership  
26 Returns” means the “amount of cash payments a DLIF Investor received from the  
27 Receivership Entities through March 31, 2019, as interest payments, redemptions, or  
28 return of principal, irrespective of the characterization by the Receivership Entities of  
such payments.” [Dkt. 321-2.] Courts generally find that it is not equitable to include  
fictitious profits in the claim amount. *See, e.g. CFTC v. Equity Financial Group, LLC*,  
2005 U.S. Dist. LEXIS 20001, at \*77 (D.N.J. Sept. 2, 2005) (“The Court agrees that  
recognizing profits or other earnings in claims for distributions would be to the  
detriment of later investors and would therefore be inequitable.”).

1 that will receive a distribution who would not have otherwise received a distribution  
2 because their distribution levels at time of distribution remain above the Rising Tide  
3 percentage.

4 **III. CONCLUSION**

5 In light of the material changes to the terms of the Settlement and the notice  
6 procedures, the Parties believe that the Amended Settlement Agreement is fair,  
7 reasonable, and adequate, and comprehensively addresses the Court's concerns. While  
8 providing substantial payment to the Receivership Estate, Investors are presented with  
9 the option to exclude themselves from the Settlement (should they elect to do so) and  
10 retain any right to pursue claims against the Deloitte Entities. Third Parties are also  
11 protected with the removal of a Third Party bar order and with the requirement that  
12 Releasing Claimants and Participating DLIF Investors reduce any verdict or judgment  
13 obtained from any Third Party by the proportionate fault of the Deloitte Entities, unless  
14 Other Governing Law requires a different reduction.

15 The Parties greatly appreciate the Court's continuing attention to the issues raised  
16 in seeking approval of the Settlement.

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1 Dated: May 24, 2022

DIAMOND MCARTHY

2 By: /s/ Christopher D. Sullivan

3 Christopher D. Sullivan

4 *Counsel for Bradley D. Sharp,*  
5 *Permanent Receiver*

6 Dated: May 24, 2022

LATHAM & WATKINS LLP

7 By: /s/ Brian T. Glennon

8 Peter A. Wald

9 Brian T. Glennon

10 Aamir Virani

11 *Attorneys for Deloitte & Touche, LLP,*  
12 *Deloitte Tax LLP, and Deloitte & Touche LLP*  
13 *(Cayman Islands)*

14 **Attestation Regarding Signatures Under Local Civil Rule 5-4.3.4**

15  
16 I, Christopher D. Sullivan, attest that all other signatories listed and on whose behalf  
17 this filing is submitted concur in the content of this filing and have authorized this filing  
18 and the affixing of their electronic signature on this filing.

19  
20 /s/ Christopher D. Sullivan

21 Christopher D. Sullivan