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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

**NOTICE OF AMENDED MOTION
AND AMENDED MOTION OF
RECEIVER FOR (1) APPROVAL OF
SETTLEMENT WITH DELOITTE
ENTITIES; (2) ENTRY OF
SCHEDULING ORDER; AND (3)
ENTRY OF ORDER APPROVING
SETTLEMENT**

Date: July 25, 2022

Time: 1:30 p.m.

Dept.: Courtroom 7D

Place: United States District Court

Western Division

350 West 1st Street

Los Angeles, CA 90012

*[MEMORANDUM OF POINTS AND
AUTHORITIES AND SUPPORTING
DECLARATIONS FILED
CONCURRENTLY HEREWITH]*

1 PLEASE TAKE NOTICE THAT on July 25, 2022, at 1:30 p.m. in Courtroom
2 7D of the above-entitled Court, located at 350 West 1st Street, Los Angeles, CA
3 92701-4516, Bradley D. Sharp, the Court-appointed permanent receiver ("Receiver"),
4 will and hereby does make this Amended Motion for Approval of Settlement with
5 Deloitte Entities; Entry of Scheduling Order; and Entry of Order Approving Settlement
6 Agreement ("Amended Motion").

7 The Amended Motion concerns a proposed settlement among and between, on
8 the one hand, (a) the Receiver for the estate of Direct Lending Investments, LLC,
9 Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI
10 Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (collectively, "DLI
11 Receivership Entities"); (b) Bradley D. Sharp and Christopher D. Johnson, in their
12 capacities as Joint Official Liquidators ("JOLs") of Direct Lending Income Feeder
13 Fund, Ltd. (in official liquidation) ("DLIFF") (DLIFF, together with the DLI
14 Receivership Entities, "DLI Entities"); (c) investors in the DLI Entities ("Investors")
15 that participated in the mediation and identified in Exhibit "A" to the Amended
16 Confidential Settlement Agreement and Release ("Party Investors") (specifically,
17 those Investors represented by The Meade Firm P.C., Reiser Law P.C., and Levine
18 Kellogg Lehman Schneider + Grossman LLP, those Investors that are plaintiffs in the
19 action *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super. Ct.)
20 and represented by Nystrom Beckman & Paris LLP, those Investors represented by
21 Bragar, Eigel & Squire PC, and those Investors that are putative lead plaintiffs in the
22 action *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement*
23 *Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.)
24 and represented by putative class counsel Ahdoot and Wolfson PC and Milberg
25 Phillips Grossman LLP); and, on the other hand, (d) Deloitte & Touche, LLP, Deloitte
26 Tax LLP, and Deloitte & Touche Cayman Islands (collectively, the "Deloitte
27 Entities"). The Receiver, JOLs, the DLI Entities, the Party Investors and the Deloitte
28

1 Entities are referred to as the “Parties.”

2 On April 8, 2021, the Receiver filed the Motion for (i) Approval of Settlement
3 Agreement with Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of
4 Bar Order (Dkt. No. 532) (“Previous Motion”). On June 14, 2021, the Court held a
5 hearing on the Previous Motion. At the hearing, the Court directed certain questions
6 to the Parties and requested “supplemental briefing as discussed on the record.” (Dkt.
7 No. 646). Since then, the Parties have worked diligently over many months to respond
8 to the Court and have substantially modified the Settlement¹. The terms of the
9 modified Settlement are contained in the Amended Confidential Settlement
10 Agreement and Release (“Amended Settlement Agreement”) attached as Exhibit 1 to
11 the Declaration of Bradley D. Sharp in support of the Amended Motion.

12 By this Amended Motion, the Receiver seeks an order for the following relief:

13 First, the Receiver requests that the Court find that notice of the hearing on the
14 Amended Motion scheduled for July 25 2022, be deemed adequate.

15 Second, that the Court enter an order substantially in the form of Exhibit “B” to
16 the Amended Settlement Agreement (“Scheduling Order”). The Scheduling Order
17 preliminarily approves the Settlement, establishes the form and content of the notices,
18 method and manner of service and publication, sets a hearing to consider the final
19 approval of the Amended Settlement Agreement, and provides an opportunity for
20 objections and participation in the final approval hearing.

21 Third, the Receiver requests that, after the procedures delineated in the
22 Scheduling Order have been met, the Court enter an order substantially in the form
23 and substance as Exhibit “E” to the Amended Settlement Agreement (“Order
24 Approving Settlement”). The Order Approving Settlement Agreement will serve as
25 the Court’s final order approving the Amended Settlement Agreement.

26 _____
27 ¹ Capitalized terms not defined herein shall have the same meaning as that in the Amended
28 Confidential Settlement Agreement and Release.

1 The material terms of the Amended Settlement Agreement are summarized
2 below. The complete terms of the Settlement are detailed in the Amended Settlement
3 Agreement.

4 1. Settlement Amount. The Deloitte Entities agree to pay the total sum of
5 thirty-one million dollars (\$31,000,000) ("Settlement Amount").
6 Amended Settlement Agreement, § 2.1.

7 2. Grand Court Sanction. The JOLs are to make an application to the Grand
8 Court of the Cayman Islands seeking an order holding that the JOLs have
9 sanction to enter into the Amended Settlement Agreement without
10 modification (other than immaterial modifications with materiality to be
11 agreed between the JOLs and the Deloitte Entities), and to take all
12 necessary steps to consummate the Settlement ("Sanction Order").
13 Within seven (7) days after the Execution Date, the JOLs shall make an
14 application by way of an interlocutory summons to the Grand Court
15 requesting the Grand Court to make the Sanction Order ("Summons").
16 Amended Settlement Agreement, § 2.2.

17 3. Approval by this Court. The Receiver is to seek approval from this Court
18 of the terms of the Amended Settlement Agreement in their entirety
19 without modification, and the entry of the Order Approving Settlement,
20 with no modification (other than immaterial modifications, with
21 materiality to be determined by the Deloitte Entities in their good-faith
22 discretion). Amended Settlement Agreement, § 2.3.

23 4. Within one day after the JOLs have filed the Summons, the Receiver is
24 to file the Amended Motion requesting entry of an order substantially in
25 the form as the Scheduling Order. This Amended Motion will be noticed
26 for a hearing to be held at least sixty (60) days after the Amended Motion
27 is filed to allow for the Sanction Order to be entered. In the event the
28 Sanction Order is not entered by the hearing date on the Amended
Approval Motion, the Receiver shall request this Court to postpone the
hearing to allow for the Grand Court to issue a decision on the Summons.
If the Grand Court does not enter the Sanction Order or such order does
not become Final, the Receiver is to withdraw the Amended Motion.
Amended Settlement Agreement, §§ 2.3(a)(i), (vi).

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5. All Parties’ Right to Withdraw. If this Court does not enter the Order Approving Settlement, or such order does not become Final, any Party shall have the right to withdraw by providing thirty (30) days written notice of withdrawal to the other Parties. In the event this Court does provide the approval and enters the Order Approving Settlement, or such order does become Final, within any thirty (30) day withdrawal notice period, such notice of withdrawal shall become ineffective. Amended Settlement Agreement, § 2.5(a).

6. If the Grand Court does not enter the Sanction Order within sixty (60) days from the day on which the JOLs file the Summons or if the Summons is not submitted within seven (7) days after the Execution Date as required in provided in § 2.2(a)(i) of the Amended Settlement Agreement, any Party has the right to withdraw by providing thirty (30) days written notice of withdrawal to the other Parties. In the event the Grand Court enters the Sanction Order within any thirty (30) day withdrawal notice period, such notice of withdrawal shall become ineffective. Amended Settlement Agreement, § 2.5(b).

7. Opt Out Rights. The Amended Settlement Agreement allows for Investors to exclude themselves from the Settlement pursuant to the procedures described in Exhibits H and I to the Amended Settlement Agreement (“Opt Out Notices”). Those Investors that exclude themselves from the Settlement through the required procedures are referred to as “Opt-out Investors.” Investors that do not exclude themselves from the Settlement through the required procedures are referred to as “Participating Investors.” “Participating DLIF Investors” means DLIF Investors that are also Participating Investors and “Participating DLIFF Investors” means DLIFF Investors that are also Participating Investors. Amended Settlement Agreement, §§ 1.16-1.20.

8. 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. Amended Settlement Agreement. Amended Settlement Agreement, § 2.9.

9. Deloitte Entities Right to Withdraw. In the event that the Opt-out Investors exceed a certain threshold agreed upon by the Parties to the Settlement, the Deloitte Entities have the sole right to withdraw from the

1 Settlement. Simultaneously with the Amended Approval Motion, counsel
2 for the Parties have executed a confidential Supplemental Agreement
3 Regarding Requests for Exclusion (“Supplemental Agreement”).
Amended Settlement Agreement, § 2.6.

4 10. Releasing Claimant and Participating DLIF Investors’ Release of
5 Released Deloitte Entities. Each Releasing Claimant and each
6 Participating DLIF Investor, shall fully, finally, and forever release,
7 covenant not to sue, and discharge each of the Released Deloitte Entities
8 from any and all Released Claims held by, on behalf of, for the benefit
of, or in the name of the Releasing Claimant. Amended Settlement
Agreement, §§1.20, 4.1(a).

9 11. Each Releasing Claimant and Participating DLIF Investor, for good and
10 valuable consideration, shall not to cause, authorize, voluntarily assist, or
11 cooperate in, or induce any Third Party to pursue the commencement,
12 maintenance, or prosecution of any action or proceeding (whether in the
13 United States, the Cayman Islands, or elsewhere) relating to or arising
14 from any Released Claims against any of the Released Deloitte Entities.
15 This provision does not restrict a Releasing Claimant or Participating
DLIF Investor from testifying truthfully if subpoenaed as a witness.
Amended Settlement Agreement, § 4.1(c).

16 12. Bar Order. Each Releasing Claimant and each Participating Investor shall
17 forever be barred and enjoined from prosecuting against any of the
18 Released Deloitte Entities, now or at any time in the future, any action,
19 lawsuit, cause of action, claim, investigation, demand, complaint, or
20 proceeding of any nature, including but not limited to litigation,
21 arbitration, or other proceeding, in any state or federal court, arbitration
22 proceeding, or other forum in the United States that relates to, is based
upon, arises from, or is connected with the professional services provided
by the Deloitte Entities to the DLI Entities. Amended Settlement
Agreement, § 4.1(b).

23 13. Proportionate Fault Reduction. Any final verdict or judgment obtained by
24 or on behalf of any Claimant or Participating DLIF Investor against any
25 Third Party shall be reduced by an amount that corresponds to the
26 percentage of responsibility of the Released Deloitte Entities for common
27 damages. However, where the law governing such final verdict or
28 judgment (“Other Governing Law”) requires a reduction in a different
amount, the final verdict or judgment shall be reduced by an amount as

1 provided by such Other Governing Law. Amended Settlement
2 Agreement, § 4.1(d).

3 The Amended Motion is made following the Receiver's communications with
4 counsel for the Securities and Exchange Commission under Local Rule 7-3, and the
5 Receiver is advised that the SEC generally does not oppose the Motion. A judgment
6 of liability has been entered against the sole defendant Direct Lending Investments,
7 LLC, which is under the supervision and control of the Receiver, making a conference
8 with that entity unnecessary. The Receiver has also communicated with Chris Johnson,
9 one of the Joint Official Liquidators over the Off Shore Feeder Fund, who has indicated
10 he does not oppose the relief sought. There are numerous interested parties served with
11 the Amended Approval Motion, making a pre-filing conference with the other
12 interested parties impracticable.

13 This Amended Motion is based upon this Notice, the Memorandum of Points
14 and Authorities, the concurrently filed Declaration of Bradley D. Sharp and
15 Declaration of Christopher D. Sullivan, the separate notice of hearing, and upon such
16 further oral argument, testimony and evidence as may be received at the hearing on
17 this matter.

18 PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7-9, any party
19 who opposes the Amended Motion must, not later than 21 days before the date of the
20 hearing on the motion, serve upon all other parties and file with the Clerk either (a) the
21 evidence upon which the opposing party will rely in opposition to the motion and a
22 brief but complete memorandum which shall contain a statement of all the reasons in
23 opposition thereto and the points and authorities upon which the opposing party will
24 rely, or (b) a written statement that that party will not oppose the motion. Evidence
25 presented in all opposing papers shall comply with the requirements of L.R. 7-6, 7-7
26 and 7-8.

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DATED: May 24, 2022

DIAMOND McCARTHY LLP

By: /s/ Christopher D. Sullivan

Christopher D. Sullivan

Counsel for Bradley D. Sharp,

Permanent Receiver

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7 *Counsel for Bradley D. Sharp,*
8 *Permanent Receiver*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION – LOS ANGELES**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 DIRECT LENDING INVESTMENTS,
18 LLC,

19 Defendant.

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

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF AMENDED
MOTION OF RECEIVER FOR (1)
APPROVAL OF SETTLEMENT
WITH DELOITTE ENTITIES; (2)
ENTRY OF SCHEDULING
ORDER; AND (3) ENTRY OF
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Date: July 25, 2022
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Dept.: Courtroom 7D
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Western Division
350 West 1st Street,
Los Angeles, CA 90012

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1 Bradley D. Sharp (“Receiver”), the permanent receiver for the estate of
2 defendant Direct Lending Investments LLC (“DLI”), and Direct Lending Income
3 Fund, L.P. (“DLIF”), Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc.,
4 DLI Lending Agent, LLC, and DLI Assets Bravo, LLC and their successors,
5 subsidiaries and affiliated entities (the “DLI Receivership Entities”) files this
6 Memorandum of Points and Authorities in support of the Amended Motion for
7 Approval of Settlement with the Deloitte Entities; Entry of Scheduling Order; and
8 Entry of Order Approving Settlement Agreement (“Amended Motion”).

9 **I. INTRODUCTION**

10 On April 8, 2021, the Receiver filed the Motion for (i) Approval of Settlement
11 Agreement with Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of
12 Bar Order (Dkt. No. 532) (“Previous Motion”). On June 14, 2021, the Court held a
13 hearing on the Previous Motion. At the hearing, the Court directed certain questions
14 and comments (“Questions”) to the Parties and requested “supplemental briefing as
15 discussed on the record.” (Dkt. No. 646). Since then, the Parties have worked
16 diligently over many months to respond to the Questions and have substantially
17 modified the settlement. The terms of the modified Settlement are contained in the
18 Amended Confidential Settlement Agreement and Release (“Amended Settlement
19 Agreement”) attached as Exhibit 1 to the Declaration of Bradley D. Sharp in support
20 of the Amended Motion.

21 In the Receiver’s informed business judgment, the Amended Settlement
22 Agreement fairly, reasonably and adequately resolves potential claims between the
23 DLI Receivership Entities, Investors,¹ and the Deloitte Entities, representing an
24 excellent resolution of these claims. The Amended Settlement Agreement permits
25 Investors to exclude themselves from the Settlement and *enhances* the rights of Third
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27 ¹ Investor means, individually and collectively, any Person that invested, via the
28 purchase of limited partnership interests or otherwise, in any of the DLI Entities,
including but not limited to the Party Investors and Participating Investors.

1 Parties who may have claims against the Deloitte Entities. While the Receiver
2 addresses each of the Court’s Questions and subsequent material modifications in
3 detail in Section III below, the Receiver highlights the following principal
4 amendments:

5 *First*, the Amended Settlement Agreement allows Investors to exclude
6 themselves from participation (*i.e.*, opt out of the settlement). (Amended Settlement
7 Agreement, §§ 1.16-1.17, 1.13; Ex. B to Amended Settlement Agreement
8 (“Scheduling Order”) at 3(b); Exs. H and I to the Amended Settlement Agreement
9 (“Opt Out Notices”). The Amended Settlement Agreement provides for robust
10 notice procedures that ensure Investors are fully informed of this right, including
11 direct notice, and the Receiver will publish an informative notice multiple times in
12 various newspapers and on the Receivership’s website. (Scheduling Order at 3 (a)-
13 (e); Exs. C-D to the Amended Settlement Agreement). Moreover, unlike typical
14 Rule 23 class actions where opt-outs forfeit their right to object, the Opt-out
15 Investors may still lodge objections.

16 *Second*, the Parties significantly narrowed the bar order they request from the
17 Court. Whereas the prior bar order would have applied to claims by Third Parties,
18 the order now requested bars only claims by the parties to the Settlement (“Releasing
19 Claimants”) and Investors who do not exclude themselves from the Settlement.
20 Further, the requested bar order applies only to claims based on the professional
21 services provided by the Deloitte Entities to the DLI Entities; and claims asserted in
22 the United States. (Amended Settlement Agreement, § 4.1(b); Ex. E to the Amended
23 Settlement Agreement (“Order Approving Settlement”) at 9). Additionally, the
24 Amended Settlement Agreement provides for the release of the Releasing
25 Claimants’ claims against the Released Deloitte Entities in addition to the claims of
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1 DLIF Investors that do not opt out (“Participating DLIF Investors”).² (Amended
2 Settlement Agreement, §§1.20, 4.1(a); Order Approving Settlement at 7).

3 Further, the Amended Settlement Agreement includes additional protections
4 for Third Parties by obligating Releasing Claimants and Participating DLIF
5 Investors to reduce any final verdict or judgment obtained from any Third Party by
6 the proportionate fault of the Deloitte Entities. (Amended Settlement Agreement, §
7 4.1(d)). These amendments address the objections by Opus Fund Services (USA)
8 LLC (“Opus”), QuarterSpot, Inc., and certain DLI officers, who now stand only to
9 benefit from the Settlement.

10 *Third*, the Settlement is not conditioned upon determination by the court in
11 *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super. Ct.), that
12 the *Jackson* plaintiffs and the Deloitte Entities entered into the Amended Settlement
13 Agreement in good faith pursuant to California Code of Civil Procedure Section
14 877.6.

15 *Fourth*, the Parties removed the indemnity hold-back provision, which
16 required the Receiver to withhold \$2.5 million from the \$31 million Settlement
17 proceeds to fund the Deloitte Entities’ defense against any claims that may be
18 asserted by Releasing Claimants.

19 *Fifth*, with the substantial modifications to the Settlement impacting DLIFF
20 Investors, the JOLs determined that sanction (approval) from the Grand Court of the
21 Cayman Islands (“Grand Court”) should be sought, and the Settlement is conditioned
22 on the JOLs obtaining such authorization. Thus, the JOLS have already filed an
23 application in the Grand Court seeking sanction.(“Summons”). (Amended
24 Settlement Agreement, § 2.2). The Receiver has noticed the hearing on the Amended
25 Motion to provide more than sixty (60) days’ notice to allow for the Grand Court to

26 _____
27 ² In light of special circumstances caused by the application of Cayman Islands law
28 and the operation of the Cayman liquidation, the Amended Settlement Agreement
no longer provides for the release of claims by DLIFF Investors. *See* Amended
Settlement Agreement, § 4.1.

1 issue a decision on the JOLs’ application before the hearing on the Amended Motion
2 is held.

3 *Sixth*, since the June 14, 2021 hearing, the Receiver, in consultation with his
4 advisers, has determined that rather than distributing the proceeds of the Settlement
5 to DLIF Investors under the Rising Tide methodology, the better course is to
6 distribute the Settlement proceeds to Participating DLIF Investors on a *pro rata* basis
7 based on the Net Investment amount. Further details on the reasoning behind the
8 Receiver’s decision are addressed in the Motion of Receiver for: (1) Modification of
9 Distribution Plan Re Deloitte & Touche Settlement Proceeds; and (2) Order
10 Approving Form and/or Manner of Notice under Local Civil Rule 66-7 to be noticed
11 for hearing in conjunction with the Amended Approval Motion.

12 By way of the Motion, the Receiver requests *first* that the Court enter the
13 Scheduling Order. The Scheduling Order preliminarily approves the Settlement,
14 establishes the form and content of the notices, method and manner of service and
15 publication, sets a hearing to consider the final approval of the Amended Settlement
16 Agreement, and provides an opportunity for objections and participation in the Final
17 Hearing.

18 *Second*, the Receiver requests that the Court find that notice of the hearing on
19 the Amended Motion scheduled for July 25, 2022 be deemed adequate.

20 *Third*, the Receiver requests that, after the procedures delineated in the
21 Scheduling Order have been met, the Court enter an order substantially in the form
22 and substance as the Order Approving Settlement.

23 **II. BACKGROUND**

24 **A. Party Investors**

25 The Party Investors instrumental in the Settlement and the mediation process
26 are composed of four investor groups: (1) investors represented by Levine Kellogg
27 Lehman Schneider + Grossman LLP, The Meade Firm P.C., and Reiser Law P.C.,
28

1 (2) investors that are plaintiffs in the action *Jackson v. Deloitte & Touche LLP*, Case
2 No. 20GDCV00419 (Ca. Super. Ct.) (“Jackson Action”), represented by Nystrom
3 Beckman & Paris LLP (“Jackson Group”); (3) investors represented by Bragar,
4 Eigel & Squire, P.C.; and (4) those investors that are putative lead plaintiffs in the
5 action *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement*
6 *Plan v. Direct Lending Investments, LLC*, et al., Case No. 2:19-cv-02452 (C.D. Cal.)
7 (“Class Plaintiffs”), represented by putative class counsel Ahdoot and Wolfson PC
8 and Milberg Phillips Grossman LLP. These four groups collectively represent
9 approximately 190 investors (Sharp Decl. ¶ 11).

10 **B. Receiver’s Contentions**

11 The Receiver, in furtherance of his duties, diligently investigated all potential
12 claims against the Deloitte Entities. (Sharp Decl. ¶ 9). The Receiver’s investigation
13 identified multiple potential factual and legal theories against Deloitte, all of which
14 depend on the resolution of disputed and often complex issues of fact and law.
15 (Declaration of Christopher D. Sullivan (“Sullivan Decl.”). ¶¶ 5, 9). First, the
16 Receiver contends that Deloitte committed professional negligence.³ Deloitte
17 performed audits of DLIF for the years ended December 31, 2016 and 2017, and of
18 DLIFF and DLI Capital, Inc. (with DLIF, collectively “the Funds”) for the period
19 from October 1, 2016 to December 31, 2016, and the year ended December 31, 2017,
20 and issued written audit opinions. (*Id.* ¶ 11). The Receiver alleged (but Deloitte
21 disputed) the following central claims, as detailed in the Sullivan Declaration.

22 The Receiver contends Deloitte committed negligence when it failed its duty
23 to, *inter alia*: (i) understand DLI and the Funds; (ii) plan and perform sufficient audit
24 procedures; (iii) obtain sufficient appropriate audit evidence; (iv) exercise
25 professional skepticism and recognize that fraud may cause misstatements; and (v)
26 assess, identify and respond to risks of material misstatement. Deloitte had a duty to

27 _____
28 ³ Obviously, in each instance here the Receiver presents contentions that he hoped to prove and Deloitte vigorously contests each contention.

1 determine that the Funds’ asserted fair value of its investments complied with
2 Accounting Standards Codification 820. (Sullivan Decl. ¶ 10).

3 Deloitte knew DLI’s investments were Level 3 assets with elevated risk of
4 overvaluation. But the Receiver contends that Deloitte failed to exercise professional
5 skepticism of management assumptions and that, on valuation, Deloitte noted the
6 risk in planning but in execution failed to audit DLI’s investment values properly.
7 (Sullivan Decl., ¶ 14.) As a result, the Receiver contends that DLI paid excessive
8 management and performance fees, much of which went to Ross, as well as repaid
9 investors excessive redemptions and funded more money into bad investments.
10 (Sullivan Decl. ¶ 15).

11 The Receiver further contends that Deloitte’s audit plan failed to address the
12 fraud risk, lack of effective internal controls, and risk of management override it
13 identified at the outset. DLI used Deloitte’s clean audit opinions to lend credibility
14 and respectability to the entities and their valuations. Deloitte continued as the
15 Funds’ auditor through the imposition of the receivership, and the 2018 audit was
16 never completed. (Sullivan Decl. ¶ 16).

17 Second, the Receiver asserts breach of contract. With respect to this claim, the
18 Receiver alleges (but Deloitte disputes) that had Deloitte complied with GAAS as
19 contractually promised, it would have discovered material misstatements and fraud
20 in the financial statements and would have prevented the Funds from suffering
21 additional losses. (Sullivan Decl. ¶ 17).

22 Third, the Receiver asserts a claim for aiding and abetting breach of fiduciary
23 duty. The Receiver alleges (but Deloitte disputes) that Deloitte gave “substantial
24 assistance” to a breach of fiduciary duty by Ross and DLI because it knew Ross and
25 DLI earned fees from high valuations. The Receiver further contends Deloitte knew
26 the fund investments were overvalued, ignored warning signs that indicated
27 overvaluation, and even assisted in supporting the overvaluations by providing
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1 unqualified audit opinions to enable Ross, his personal entities, and DLI to continue
2 to collect high fees in violation of duties owed to the Funds.

3 The Receiver evaluated multiple potential theories of damages, including: (i)
4 the Funds' payments to the Deloitte Entities for audit services; (ii) performance fees
5 and management fees paid by the DLI Capital, Inc. ("Master Fund") to DLI; (iii)
6 investor redemptions; (iv) out of pocket losses; and (v) administrative and custody
7 fees. Further details are in the Sullivan Declaration.

8 The Funds paid the Deloitte Entities \$1.71 million for audit services. The
9 Master Fund paid management and performance fees to DLI based on the Master
10 Fund's Net Asset Values ("NAV"). An inflated NAV inflated management fees. In
11 total, the Master Fund paid in excess of \$14.5 million in management fees and \$29
12 million in performance fees from May 2017 to February 2019. The Receiver's report
13 (Dkt. 320) conservatively estimated a 21.1% overvaluation as of year-end 2016,
14 resulting in \$9.17 million in excess payments. DLI also paid redemptions and
15 distributions to investors of \$668 million during this period. If inflated by the same
16 21.1%, DLI paid excess funds of \$141 million during this period. Counsel for the
17 Receiver contends that further expert development and analysis on a more fact-
18 specific basis will lead to the conclusion that the actual overvaluations were larger.
19 (Sullivan Decl. ¶¶ 24-25).

20 After Deloitte issued its audit opinion with respect to DLI's fiscal year 2016
21 financial statements, DLI funded an additional \$44 million in cash net of repayments
22 to five overvalued investments between May 2017 and March 2019. DLI's decision
23 to continue all such investments may have differed upon receipt of correct
24 valuations. (Sullivan Decl. ¶ 27). DLI also paid NAV-based vendor fees, consisting
25 of \$848,487 paid for administration fees and \$755,920 paid for custody fees.
26 Corrected valuations may also have reduced these fees. (*Id.*)

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1 **C. Party Investors’ Contentions**

2 The Party Investors also contend that Deloitte failed to meet its professional
3 standard of care in performing its audits of DLI Entities and that the audit report
4 contained misrepresentations. They contend (but Deloitte disputes) that the Party
5 Investors would not have invested with DLI, and would have sought to redeem
6 existing investments absent such misrepresentations. Accordingly, they claim tens
7 of millions of dollars in damages. (Sullivan Decl. ¶ 30).

8 **D. Deloitte’s Contentions**

9 Deloitte will challenge liability and assert that its audits complied with GAAS.
10 Deloitte will endeavor to demonstrate through its interactions with DLI and third
11 parties that it obtained appropriate and sufficient evidence and performed sufficient
12 procedures to support its analysis and conclusions. And Deloitte will assert that it
13 properly relied on DLI’s officers and agents, and DLI’s valuation specialist.

14 ***In Pari Delicto***

15 Deloitte will claim the Receiver’s claims are barred in their entirety by the
16 doctrine of *in pari delicto*. *In pari delicto* can bar claims against auditors if corporate
17 officers intentionally provided inaccurate financial statements or other material
18 misstatements and concealed fraud. Here, Deloitte asserts that Brendan Ross’ years-
19 long fraud resulted in Ross intentionally providing inaccurate financial statements
20 to Deloitte for the performance of its audits and taking other steps to conceal Ross’
21 fraud from Deloitte. If litigated, among other issues, the parties will vigorously
22 contest the application of the “adverse interest exception,” the legal and factual
23 significance of whether DLI received a benefit from its continuing operations,
24 whether the “sole actor” exception to adverse interest applies, and if innocent
25 insiders would have halted the fraud if it was known. (Sullivan Decl. ¶¶ 19-21).

26 **No Causation**

27 Deloitte will assert that its conduct did not proximately cause injury to the
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1 Funds, that the Receiver cannot show that DLI would have liquidated earlier had
2 Deloitte identified the incorrect valuations and reported them, and that DLI extended
3 and renegotiated other bad investments. Deloitte will maintain that Ross’s
4 intervening conduct, among other conduct, was not foreseeable, and that other,
5 superseding, events will cut off causation. (Sullivan Decl. ¶ 22).

6 **Damages Defenses**

7 Deloitte will challenge the Receiver’s calculation of the overvaluation of each
8 specific investment and any attempt by the Receiver to demonstrate portfolio-wide
9 overvaluation. Deloitte will assert defenses of comparative fault and attribute
10 responsibility for the Funds’ s injuries on their directors and officers, *e.g.* Ross, and
11 the other professional advisers that provided financial services to the DLI
12 Receivership Entities. Deloitte will argue that it is entitled to offsets for additional
13 investments received by DLI, other recoveries pre and post receivership, and that
14 DLI and the receivership have failed to mitigate damages. (Sullivan Decl. ¶ 29).

15 **Defenses to Investors’ Claims**

16 Deloitte will assert that any Investor that did not review the audit opinions
17 cannot show actual and justifiable reliance on any false representations in Deloitte’s
18 audit opinions. Those Investors investing through a registered investment advisor
19 may have to establish indirect reliance by proving that their advisor communicated
20 the substance of the audit opinions on which they relied—something Deloitte asserts
21 those Investors cannot do. (Sullivan Decl. ¶ 31).

22 Deloitte will likewise dispute reliance by Investors that purchased their DLI
23 interests before Deloitte issued any audit opinion. Further, to the extent Investors
24 assert “holder claims” – *i.e.*, claims that an investor would have sold a security at a
25 higher price, but for a material false representation – Deloitte asserts such claims
26 require a specific showing of actual justifiable reliance, including proof that the
27 investor would have actually sold its DLI investment. (Sullivan Decl. ¶ 32). With
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1 respect to their claim of aiding and abetting breach of fiduciary duty, Deloitte will
2 challenge investors’ proof that Deloitte knew of and substantially assisted the
3 breach. (Sullivan Decl. ¶ 33).

4 Deloitte is also anticipated to raise defenses to the investors’ damage claims,
5 including the limitation of out-of-pocket damages to the Deloitte audit period.
6 Further, Deloitte will argue that the investors’ damages should be reduced by the
7 Receiver’s recovery, and by the investors’ comparative fault based on investors’
8 knowledge of Ross’s personal investments in counterparties or knowledge of Ross’s
9 fraud. (Sullivan Decl. ¶ 34).

10 **E. Material Modifications to the Settlement Agreement.**

11 As addressed briefly in the Introduction, the Parties have worked
12 diligently to modify the Settlement to resolve the Court’s Questions, most notably
13 by providing Investors with the opportunity to opt out and removing the Third Party
14 bar order. With these modifications, certain additional changes were required.

15 **A. Opt Out Rights**

16 The Amended Settlement Agreement now provides Investors with the right to
17 exclude themselves (opt out) from participation in the Settlement. Sections 1.16-
18 1.20 of the Amended Settlement Agreement define “Opt-out Investors” and
19 “Participating Investors”.

20 The Amended Settlement Agreement contains robust notice procedures that
21 will ensure Investors are fully informed of their rights and how to exercise them.
22 Exhibits H and I (“Opt-Out Notices”) provide Investors with information on: (i) what
23 the Settlement affords; (ii) how the Settlement will be allocated; (iii) what rights the
24 Investor is giving up to potentially receive payment; and (iv) Investor options and
25 the ramifications of each. (Exs. H-I). The Receiver has also crafted simple
26 procedures for Investors to exercise their right to opt out. *See* Ex. H-I (Investors must
27 send a written letter by email). Additional rights have been provided, in that
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1 Investors who opt out are not prevented from objecting to the Amended Settlement
2 Agreement. *See id.* (“If you object to the Settlement, you must also elect whether to
3 opt-out”). Although this right is typically not provided to those who opt out in the
4 class action context, it is provided here to ensure that the Court is apprised of all
5 objections to the Amended Settlement Agreement. In addition to the Opt-Out
6 Notices, Investors will receive the general notice providing more details.
7 (Scheduling Order at 3; Ex. B to Amended Settlement Agreement (“Notice of
8 Settlement”).)

9 The following are the material provisions in the Amended Settlement
10 Agreement that pertain to the rights of the Investors.

- 11 • Only Releasing Claimants and Participating DLIF Investors will release
12 their claims against the Deloitte Entities. (Amended Settlement Agreement,
13 §§ 1.19, 1.25, 4.1(a); Order Approving Settlement at 7). Participating
14 DLIFF Investors will not release their claims (if any) against the Deloitte
15 Entities because Cayman Islands law prohibits such releases, while limiting
16 the ability of DLIFF Investors to assert direct claims against the Deloitte
17 Entities in numerous other ways.
- 18 • Only Releasing Claimants and Participating Investors will be barred from
19 prosecuting or seeking monetary or other relief in any state or federal court,
20 arbitration proceeding, or other forum in the United States against the
21 Released Deloitte Entities, with respect to claims related to the professional
22 services the Deloitte Entities provided the DLI Entities. (Amended
23 Settlement Agreement, §§ 1.18, 4.1(b); Order Approving Settlement at 9).
- 24 • Opt-Out Investors will not release their claims against the Deloitte Entities
25 nor shall such claims be barred.
- 26 • Only Claimants and Participating DLIF Investors will be eligible to receive
27 any portion of the Settlement Amount allocated to DLIF from the Receiver.

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1 The distribution of the Settlement Amount to DLIFF Investors will be
2 determined in accordance with Cayman Islands law. (Amended Settlement
3 Agreement, § 2.9).

4 B. No Release of Third Party Claims or Third Party Bar Order

5 To address the Court’s concerns and the objections raised by Opus,
6 QuarterSpot, DLI counterparty, and certain DLI officers, the Parties have
7 significantly modified the Settlement. The Amended Settlement Agreement and the
8 Order Approving Settlement do not contain a Third Party claims bar. Only claims of
9 Releasing Claimants and Participating DLIF Investors against the Deloitte Entities
10 are being released. (Amended Settlement Agreement, § 4.1(a). The definition of
11 Released Claims no longer extends to Third Party claims. (Amended Settlement
12 Agreement, § 1.23 (“Released Claims means to the fullest extent that the law permits
13 their release, all past, present and future claims...of the Claimants or Participating
14 DLIF Investors...”); *Compare* Dkt 532-2 Settlement Agreement § 1.15 (“Released
15 Claims means to the fullest extent that the law permits their release, all past, present
16 and future claims...of, or in the name of the Claimants, the Investors, and/or any
17 Person...”). Such releases are consistent with established law in equitable
18 receivership proceedings and the class action context (which bears similarities to the
19 structure of the Settlement, including the procedural protections afforded to
20 Investors). *See, e.g., Secs. and Exch Comm’n v. Alleca*, No. 12-cv-03261-ELR (N.D.
21 Ga. Nov. 20, 2017), ECF No. 145-1 (“[T]he Receiver . . . on behalf of himself, . . .
22 the Receivership Entities and all Third Parties for which the Receiver has authority,
23 releases, acquits, and forever discharges Alexandria from the Released Claims.”);
24 No. 12-cv-03261-ELR (N.D. Ga. Oct. 28, 2019), ECF No. 177 (approving
25 settlement); *see Fowler v. Union P. R.R. Co.*, No. EDCV172451JGBSPX, 2019 WL
26 13038410, at *3 (C.D. Cal. Jan. 7, 2019) (approving settlement providing that
27 “[e]ach Class Member, except those who timely Opt-Out, will be bound to the
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1 release of Released Claims as a result of the Settlement.”); *Monaco v. Bear Stearns*
2 *Residential Mortg. Corp.*, No. 209CV05438SJOJCX, 2014 WL 12564085, at *3
3 (C.D. Cal. Feb. 4, 2014) (approving settlement providing that “every Class Member
4 who is not a Successful Opt-Out [is] permanently enjoined and barred from
5 commencing or prosecuting any action asserting any matter within the scope of the
6 Release.”).

7 Additionally, the Amended Settlement Agreement only requests an order
8 barring Releasing Claimants and Participating Investors from prosecuting any
9 claims or proceeding in the United States against the Deloitte Entities that is based
10 on professional services provided by the Deloitte Entities to the DLI Entities.
11 (Amended Settlement Agreement, § 4.1(b); Order Approving Settlement at 9 (“The
12 Court permanently bars, restrains and enjoins each of the Releasing Claimants and
13 Participating Investors...”); *Compare* Dkt. 532-2 Ex. E at 10 (“The Court hereby
14 permanently bars, restrains and enjoins the Receiver, the JOLs, the DLI Entities, the
15 Investors, and all other *Persons*...”)(emphasis added)). Thus, Third Parties are not
16 prohibited from bringing claims against the Released Deloitte Entities. Similar, if
17 not broader, bar orders have often been entered under a receivership court’s
18 equitable authority. *See, e.g., Sec. and Exch. Comm’n v. Sunwest Management, Inc.*,
19 No. 6:09-cv-06056-AA (D. Or. Sept. 20, 2011), ECF No. 2179 (barring “any and all
20 claims against the Settling Brokers for damages arising from their conduct related to
21 the activities of Sunwest Management”).

22 Moreover, the Amended Settlement Agreement enhances the rights of Third
23 Parties by obligating Releasing Claimants and Participating DLIF Investors to
24 reduce any final verdict or judgment obtained from any Third Party by an amount
25 found to result from the Deloitte Entities’ proportionate fault, to the extent
26 permissible under the law governing such verdict or judgment. (Amended
27 Settlement Agreement, § 4.1(d); Order Approving Settlement at 8).

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1 Such provisions are endorsed by courts in this Circuit. *See* Judgment
2 Approving Class Action Settlement at 5-6, *In re Snap Inc. Secs. Litig.*, No. 2:17-cv-
3 03679-SVW-AGR (C.D. Cal. Mar. 9, 2021), ECF No. 398 (including proportionate
4 fault offset provision); *Mild v. PPG Indus.*, No. 18-cv-04231-RGK-JEM, 2019 WL
5 9840627, at *4 (C.D. Cal. Nov. 22, 2019) (same); *see also Rieckborn v. Velti PLC*,
6 No. 13-CV-03889-WHO, 2015 WL 468329, at *15 (N.D. Cal. Feb. 3, 2015) (same);
7 *see generally Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1231-32 (9th Cir. 1989)
8 (holding that “allowing only proportional liability” for nonsettling defendants
9 “comports with the equitable purpose of contribution”). These amendments
10 significantly protect the rights of Third Parties and are clearer than the previous
11 Settlement Agreement with respect to the rights of Third Parties. *Compare* Dkt. 532-
12 2, Settlement Agreement § 5.3(c).

13 The only Third Parties that have either been sued or threatened with claims by
14 the Claimants (and by virtue of those claims or threatened claims may have claims
15 for contribution against the Deloitte Entities) are: 1) Opus Fund Services (USA) LLC
16 (“Opus”), 2) Duff & Phelps, LLC, DLI’s valuation specialist, 3) EisnerAmper LLP,
17 DLI’s predecessor external auditor, 4) QuarterSpot, Inc., and 5) certain DLI officers.
18 Among these Third Parties, only Opus has filed claims against certain of the Deloitte
19 Entities. Still, Opus and all other Third Parties stand to benefit from the Settlement
20 because of the proportionate fault provision and removal of the Third Party claims
21 bar. (Amended Settlement Agreement, § 4.1(c); Order Approving Settlement at 8).

22 The Amended Settlement Agreement is consistent with established law and
23 ensures that Third Parties are treated equitably.

24 C. Sanction from the Grand Court.

25 With the substantive changes made to the Settlement after the June 2021
26 hearing, considerable effort was expended to address issues relating to the rights of
27 DLIFF Investors. The JOLs concluded that the modifications to the Settlement
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1 required approval from the Grand Court in the Cayman Islands. Thus, the Parties
2 negotiated § 2.2, which details the procedure for obtaining sanction from the Grand
3 Court. Understanding this Court’s case load, the Amended Settlement Agreement
4 contemplates a hearing on the Amended Motion only once the Sanction Order is
5 entered. (Amended Settlement Agreement, §§ 2.3(a)(i), (iv)). The Parties have the
6 right to withdraw from the Settlement if this Court or the Grand Court do not enter
7 the respective orders. (Amended Settlement Agreement, § 2.5).

8 D. Jackson Action.

9 The Amended Settlement Agreement no longer requires the entry of an order
10 pursuant to Section 877.6 of the California Code of Civil Procedure determining the
11 good faith nature of the Jackson Group’s settlement with the Deloitte Entities and
12 barring contribution claims by any alleged joint tortfeasors against the Deloitte
13 Entities (Dkt. 532-2, Section 2.2(c)). Section 2.4 of the Amended Settlement
14 Agreement now provides that the Deloitte Entities *may* move for a good faith
15 Settlement determination.

16 E. Indemnity Provision.

17 At the June 14, 2021 hearing, the Court expressed concern that the indemnity
18 provision of the Settlement Agreement potentially reduces the amount for
19 distribution and unfairly benefits the Deloitte Entities. Understanding the Court’s
20 concerns, the Amended Settlement Agreement completely eliminates this indemnity
21 provision freeing up \$2.5 million for distribution.

22 F. Additional Modifications.

23 The Parties also made these additional edits to address the Court’s Questions:

- 24 • The newspaper notice is significantly more informative and will be
25 published
26 twice in *The Wall Street Journal*, and the international edition of *The New*
27 *York Times* and once in *The Los Angeles Times*. (Ex. D to Amended
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1 Settlement Agreement; Scheduling Order at 3).

2 • Objections are not required to be filed, and instead will be compiled by the

3 Receiver and filed with the Court as a group.

4 • Objectors do not need to file written objections in order to appear at the

5 Final

6 Approval Hearing. Persons who fail to timely object may appear at the

7 Court’s discretion. (Amended Scheduling Order at 4).

8 • The Order Approving Settlement no longer contains a finding that all

9 Parties

10 have complied with Federal Rule of Civil Procedure 11.

11 • The scope of the claims bar has been narrowed to avoid potentially

12 prohibiting the Releasing Claimants or Participating Investors from cooperating in

13 federal investigations. *See* Order Approving Settlement at 9 (only preventing

14 Releasing Claimants and Participating Investors from “prosecuting”); *Compare* 532-

15 2 Ex. E at 10. The Order Approving Settlement also allows Releasing Claimants and

16 Participating Investors to cooperate with governmental investigations to the extent

17 such cooperation would conflict with the terms of the Amended Settlement

18 Agreement. *See* Order Approving Settlement at 7 (“Nothing in the foregoing shall

19 preclude any Releasing Claimant or Participating Investor from cooperating with

20 governmental authorities in a lawful manner or responding to a valid subpoena.”).

21 **III. RELIEF REQUESTED**

22 The Receiver requests (i) entry of the Scheduling Order, preliminarily

23 approving the Amended Settlement Agreement and the Settlement Approval

24 Procedures outlined herein; (ii) entry of the Order Approving Settlement approving

25 the Settlement Agreement on a final basis after the expiration of the objection

26 deadline if no objections are timely filed or after the Final Approval Hearing if

27 objections are timely filed; and (iii) a finding that notice of the hearing on this

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1 Motion set for July 25, 2022 be deemed appropriate and sufficient.

2 **IV. BASIS FOR RELIEF REQUESTED**

3 **A. The Settlement Agreement is Fair, Reasonable, and Adequate**

4 There are no “federal rules [that] prescribe a particular standard for approving
5 settlements in the context of an equity receivership; instead a district court has wide
6 discretion to determine what relief is appropriate.” *Secs. and Exch. Commn. v.*
7 *Capital Cove Bancorp LLC*, 8:15-cv-00980-JLS-JCx-2017 WL 11643414, at * 2 (C.
8 D. Cal. March 16, 2017) (quoting *Gordon v. Dadante*, 336 Fed. Appx 540, 549 (6th
9 Cir. 2009)). “A district court’s power to supervise an equity receivership and to
10 determine the appropriate actions to be taken in the administration of the
11 receivership is extremely broad.” *Secs. and Exch. Commn. v. Hardy*, 803 F.2d 1034,
12 1037 (9th Cir. 1986). “The district court has broad powers and wide discretion to
13 determine the appropriate relief in an equity receivership.” *Secs. and Exch. Commn.*
14 *v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978).

15 Because Local Rule 66-8 directs a receiver to “administer the estate as nearly
16 as possible in accordance with the practice in the administration of estates in
17 bankruptcy[,]” the Court is to look to bankruptcy law for guidance. *See* C. D. Cal.
18 R. 66-8; *Capital Cove Bancorp, LLC*, 2017 WL 11643414, at * 2; *Secs. and Exch.*
19 *Commn. v. Ruderman*, CV09-02974-ODW (JCx), 2011 WL 5857452, at *3 (C.D.
20 Cal. Nov. 21, 2011). The Ninth Circuit has held that: “‘Before ‘approving a
21 settlement agreement, the bankruptcy court is charged with considering the ‘fairness,
22 reasonableness, and adequacy’ of the agreement.” *United States v. Edwards*, 595
23 F.3d 1004, at 1012 (9th Cir. 2010) (quoting *In re A & C Props.*, 784 F.2d 1377, 1381
24 (9th Cir. 1986)). The bankruptcy court considers the following factors in examining
25 a proposed settlement:

- 26 (a) The probability of success in the litigation; (b) the difficulties, if
27 any, to be encountered in the matter of collection; (c) the complexity
28 of the litigation involved, and the expense, inconvenience and delay
necessarily attending it; (d) the paramount interest of the creditors and

1 a proper deference to their reasonable views in the premises.
2 *Id.* at 1012. “The purpose of a compromise agreement is to allow the trustee and
3 creditors to avoid the expenses and burdens associated with litigating sharply
4 contested and dubious claims. The law favors compromise and not litigation for its
5 own sake[.]” *In re A & C Props.*, 784 F.2d at 1380 (internal citations omitted).
6 “Although the Court may not simply ‘rubber-stamp’ the decision to enter into a
7 settlement, it need not conduct an exhaustive investigation, hold a mini-trial on the
8 merits of the claims sought to be compromised, or require that the settlement be the
9 best that could possibly be achieved.” *Ruderman*, 2011 WL 5857452, at *3. The
10 Court generally gives deference to the trustee’s business judgment. *See id.*; *Capital*
11 *Cove Bancorp, LLC*, 2017 WL 11643414, at *2.

12 The Amended Settlement Agreement is the result of substantial effort and
13 negotiations among the Parties, with considerable time having been expended to
14 modify the Settlement to address the Court’s concerns and issues relating to the
15 rights of Investors. The Receiver believes in his business judgment that the proposed
16 Amended Settlement Agreement is fair, reasonable, and adequate. (Sharp Decl. ¶
17 22). Further, in consultation with and on the advice of retained professionals and the
18 expert consultant hired to review and assess the Receiver’s claims and the Deloitte
19 Entities’ defenses, the Receiver believes that the Amended Settlement Agreement
20 offers the best and substantial recovery for the DLI Receivership Entities. Upon
21 consideration of the governing factors, the Amended Settlement Agreement should
22 be approved.

23 The Probability of Success and the Complexity of Litigation Examined
24 Together.

25 Following the June 14, 2021 hearing, the Parties returned to the drawing board
26 to address the Court’s Questions and craft revisions to the Settlement. As reflected
27 in the Amended Settlement Agreement, the Parties expended considerable time and
28 thought in fashioning workable solutions. The Receiver believes that the Amended

1 Settlement Agreement addresses the Court's Questions, provides substantial
2 recovery to the DLI Receivership Entities, preserves the rights of Investors who
3 decide to opt out of the Settlement, and treats Third Parties equitably.

4 Under the terms of the Amended Settlement Agreement, the Deloitte Entities
5 will pay the amount of \$31,000,000 to be deposited into escrow account(s).

6 The Settlement Agreement provides that \$4,650,000 shall be set aside to compensate
7 the attorneys for the Party Investors. Importantly, the actual amount the attorneys'
8 fees awarded will be decided by this Court, and should the Court award fees for a
9 sum less than \$4.65 million, the difference will be paid to the Receiver for the benefit
10 of DLIF and DLIFF.

11 While the Settlement Amount reflects the strength of the Receiver's and the
12 Party Investors' claims, there are significant litigation risks to pursuing these claims
13 against the Deloitte Entities. The Receiver contends that there are several legal
14 theories that provide avenues for potential recovery; however, these theories rest on
15 the resolution of complex and disputed issues of fact and law. The relative strengths
16 and possible weaknesses of the claims strongly support the Receiver's business
17 judgment that the settlement is fair, adequate, and reasonable. The Settlement
18 Amount represents a significant recovery in relation to the damages attributable to
19 the Deloitte Entities' conduct, and the risk and expense of litigation. Deloitte
20 contests each allegation of wrongdoing asserted by the Receiver and would advance
21 those arguments in any litigation with vigor, and are represented by extremely
22 effective and capable counsel.

23 As stated above, *supra*, Section I(B), and in further detail in the Sullivan
24 Declaration, the Receiver has claims for professional negligence, breach of fiduciary
25 duty, breach of contract, and aiding and abetting breaches of fiduciary duty, based
26 on the Receiver's extensive investigation and the work of his counsel and the expert
27 consultant in evaluating these claims. The settlement of these claims recognizes the
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1 risks inherent in litigating them, the costs and delays of litigation, and the defenses
2 available to the Deloitte Entities. The Receiver’s litigation team diligently evaluated
3 these defenses and worked with the Receiver and the expert consultant to assess the
4 importance of the defenses in determining whether to enter into the Settlement. The
5 Receiver and the JOLs prepared a confidential and privileged summary of
6 recommendations regarding potential claims and defenses. For purposes of
7 mediation, counsel also prepared a confidential and privileged analysis of the
8 strengths and weaknesses of the various defenses, the likely impact on damages, and
9 settlement ranges given the evaluated litigation risks. (Sharp Decl. ¶ 11).

10 One of the Deloitte Entities’ central defenses to the Receiver’s claims is the
11 doctrine of *in pari delicto*. New York law may apply to the Receiver’s claims against
12 Deloitte, and under New York law, the defense rests on the theory of agency,
13 imputing the bad actors’ conduct to the company and “mandat[ing] that the courts
14 will not intercede to resolve a dispute between two wrongdoers.” *Kirschner v.*
15 *KPMG LLP*, 15 N.Y.3d 446, 464 (2010).

16 The settlement risk analysis of *in pari delicto* involves a complex series of
17 exceptions. To avoid the doctrine’s application, the Receiver will likely need to show
18 that the “adverse interest” exception applies. This exception applies where the agent,
19 such as Ross, has “totally abandoned his principal’s interests and [is] acting entirely
20 for his own or another’s purposes. It cannot be invoked merely because he has a
21 conflict of interest or because his is not acting primarily for his principal.” *Ctr. v.*
22 *Hampton Affiliates, Inc.*, 66 N.Y.2d 782, 785 (1985). Deloitte will argue the
23 exception does not apply because the audit provided the entity a benefit which
24 permitted the Funds to continue their operations. *See In re Platinum-Beechwood*
25 *Litig.*, 427 F.Supp.3d 395, 446 (S.D.N.Y 2019). (Sullivan Decl. ¶ 20).

26 But some recent decisions have found “the mere continuation of a corporate
27 entity does not per se constitute a benefit that precludes application of the adverse
28

1 interest exception,” and have rejected prior, unreasonably narrow interpretations of
2 the exception. *Simon Conway, et al. v. Marcum & Kliegman LLP*, 176 A.D.3d 477,
3 477-478 (N.Y. App. Div., 1st Dep’t 2019). The *Conway* court rejected the argument
4 that the hedge funds’ continued survival for two years after the audit was a sufficient
5 benefit to defeat the adverse interest exception and recognized that “an ongoing
6 fraud and a continued corporate existence may harm a corporate entity” by
7 permitting the agent to continue to loot it. (Sullivan Decl. ¶ 21).

8 The Second Circuit has also permitted particular schemes or transactions to
9 be segregated such that certain schemes will be deemed to have inured to the benefit
10 of the corporation, while others did not. See *In re Bennett Funding Group, Inc.*, 336
11 F.3d 94, 100 (2d Cir. 2003). Because there were numerous investments in DLI, the
12 Receiver can parse the particular investments to defeat the defense. Deloitte will also
13 argue that the adverse interest exception does not apply because Ross was the sole
14 decision maker of the principal, the sole actor exception. The Receiver has viable
15 arguments here as well based on the “innocent insider” exception. This exception
16 turns on whether other innocent persons “inside the corporation had the power to
17 stop the fraud.” *In re Arbco Capital Mgmt., LLP*, 498 B.R. 48 (E. D. Bankr. 2013).
18 Whether this exception applies will rest on disputed facts as to whether there were
19 innocent insiders at DLI that had actual authority to stop the fraud. *Cobalt*
20 *Multifamily Investors I, LLC v. Shapiro*, 2009 WL 2058530, at *8 (S.D.N.Y. July
21 15, 2009).

22 Causation also presents complex factual issues, including the effect of
23 intervening events on the chain of causation. The Receiver believes that he has
24 responses to Deloitte’s positions (*supra* I(D)), but causation presents complex
25 factual issues, including the effect of intervening events and calculating
26 overvaluation of specific investments. The complex issues related to causation create
27 litigation risk for both sides. (Sullivan Decl. ¶ 22).

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1 The Receiver also investigated the magnitude and nature of damages that he
2 contends was caused by Deloitte’s actions (*supra* I(B) at 9:5-28). The Receiver’s
3 investigation revealed that the Fund had suffered significant losses and that such
4 losses could be, certainly in part, attributable to Deloitte’s actions. (Sullivan Decl. ¶
5 10). While the Receiver and his team conducted detailed damages analysis, the
6 analysis would require supplementation for trial. Deloitte vehemently opposes the
7 Receiver’s damages calculations (*supra* I(D) at 11:6-14).

8 The Party Investors’ claims also face substantial risk. Deloitte will raise
9 defenses to the Party Investors’ damages claims, arguing that the investors’ damages
10 should be reduced by the Receiver’s recovery, and by their comparative fault based
11 on their knowledge of Ross’s personal investments in counterparties or knowledge
12 of Ross’s fraud. (Sullivan Decl. ¶ 34).

13 There is significant litigation risk for the Party Investors with respect to their
14 ability to show reliance on Deloitte’s audit opinions. Because the Party Investors
15 will likely have to show actual and justifiable reliance on false representations in the
16 audit opinions, there is a risk that many (who did not review the audit opinions) will
17 be unable to establish reliance. Further, to the extent that a Party Investor may have
18 invested through a registered investment advisor who may have reviewed the audit
19 opinions, in order to establish indirect reliance, the Party Investors will still likely
20 have to prove that the substance of the audit opinions was communicated to them
21 and that they in turn relied on it. With respect to the Party Investors’ claims for aiding
22 and abetting breach of fiduciary duty, they will have to prove Deloitte knew of and
23 substantially assisted the breach. These all present substantial risks. (Sullivan Decl.
24 ¶¶ 31-33).

25 As the above and the supporting declarations demonstrate, the Receiver and
26 his litigation team carefully considered and vigorously investigated, analyzed, and
27 evaluated the claims against the Deloitte Entities; the counterclaims and defenses
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1 that would be asserted to those claims, including the actual defenses asserted by the
2 Deloitte Entities; the delay and expense of prosecuting of such claims; the
3 uncertainty of outcome in any such litigation; and the possibility of appeal of any
4 adverse outcome. The Receiver’s investigation revealed that the Receiver’s claims
5 against the Deloitte Entities involve disputed facts, defenses, and complex and novel
6 issues of law that would require a substantial amount of time and expense to litigate,
7 with uncertainty as to the outcome of such litigation and any ensuing appeal. (Sharp
8 Decl. ¶ 22). In light of the relative strength and weaknesses of the claims and
9 defenses, the proposed Amended Settlement Agreement resolves any disputes with
10 the Deloitte Entities and brings substantial money into the Receivership estate
11 without the costs and uncertainty of litigation.

12 Paramount Interest of Creditors and Deference to Their Views.

13 This factor is analyzed with respect to the interest of the Investors, given the
14 nature of this equity receivership. Counsel for the Party Investors have played an
15 active and vital role throughout the settlement process. The Party Investors,
16 consisting of 190 Investors, and represented by four highly qualified law firms,
17 became active participants early in the settlement process and have continued to play
18 an active role. The Receiver through his litigation team had frequent communication
19 with the attorneys for the Class Plaintiffs Bragar, Egel & Squire. Additionally,
20 counsel for the Century Group of investors, collaborated regularly with the
21 Receiver’s team. By the Fall of 2020, the Receiver’s litigation team and counsel for
22 the Party Investors had weekly calls to discuss the mediation process. By the time
23 the Jackson Group filed their complaint in June of 2020, their counsel, was actively
24 involved and had done substantial work. As discussions with the Deloitte Entities
25 regarding a settlement process came together, the Receiver’s team increased their
26 efforts to work cooperatively with the Party Investors. More recently, counsel for
27 the Party Investors have been active in suggesting amendments to the Settlement and
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1 conforming the papers to address the Court’s concerns.

2 The Party Investors would have been extremely unlikely to be able to pursue
3 claims broader than the claims owned by the 190 Party Investors. By settling through
4 the Receiver, they are able to broaden the settlement recovery to account for
5 damages the Party Investors claim the Deloitte Entities caused to all Investors.

6 The Receiver’s decision to enter into the Amended Settlement Agreement is
7 guided by what in his business judgment he believes is in the best interest of the
8 Receivership estate, the constituents of which primarily are the Investors. The
9 Receiver is uniquely positioned to represent the interests of the Investors. *See N. Am.*
10 *Broad., LLC v. U.S.*, 306 F. App’x. 371, 373 (9th Cir. 2008) (“A court-appointed
11 receiver is an officer of the court, appointed on behalf and for the benefit of all the
12 parties having an interest in the property.”); *Ward v. Comm’r*, 224 F.2d 547, 550
13 (9th Cir. 1955) (same); *Secs and Exch. Commn. v. TLC Invs. and Trade Co.*, 147
14 F.Supp.2d 1031, 1037 (C. D. Cal. April 9, 2001) (“The Receiver, an arm of the Court
15 represents the interests of all investors.”); *Secs and Exch. Commn. v. Total Wealth*
16 *Mgt., Inc.*, No. 15-CV-226-BAS-RNB, 2018 WL 3456007, at *6 (S.D. Cal. July 18,
17 2018) (“The Receiver acts on behalf of the best interests of the investors of the
18 Receivership Entities, who were harmed.”);

19 Among other things, the Receiver is empowered to compromise the estate’s
20 claims in the interest of maximizing estate assets for distribution to Investors. *See*
21 *Dkt. 10 (Preliminary Injunction Order and Order Appointing Permanent Receiver)*
22 (the Receiver is empowered “to take such action as is necessary and appropriate to
23 preserve and take control of and to prevent the dissipation, concealment, or
24 disposition of any assets.”). The Amended Settlement Agreement enables the
25 Receiver to carry out those duties.

26 The Parties drafted the Amended Settlement Agreement to include the same
27 protections afforded to parties in the class action context. The Amended Settlement
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1 Agreement allows all Investors to benefit from the Settlement. But it also provides
2 Investors with the option to exclude themselves from the Settlement and retain any
3 rights to prosecute claims against the Deloitte Entities. The Amended Settlement
4 Agreement affords Investors with certain protections, including: 1) robust notice
5 procedures designed to inform Investors of the Settlement and their right to exclude
6 themselves, *see* Opt Out Notices; 2) the right to submit objections to the Settlement,
7 *see* Amended Scheduling Order at 4; and 3) the opportunity to be heard at the Final
8 Approval Hearing, *see* Amended Scheduling Order at 4.

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

18 In entering into the Amended Settlement Agreement, the Receiver is guided
19 by what he believes, in his business judgment, to be in the best interests of the
20 Investors. (Sharp Decl. ¶ 23).

21 Difficulties to be Encountered in Collections.

22 If the Receiver was to prevail on his claims after trial, the Receiver does not
23 anticipate that he will have difficulty in collecting the judgment. However, the issue
24 is time. The Deloitte Entities, who are represented by experienced and skilled
25 counsel, will put up a spirited defense at trial, which will delay recovery and
26 consequently distributions. Should the Receiver prevail at trial, the Deloitte Entities
27 are likely to appeal, which will undoubtedly cause additional delays.

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1 In considering the governing factors laid out by this Circuit in *United States*
2 *v. Edwards*, the Amended Settlement Agreement is fair, reasonable, and adequate.
3 The Receiver has considered the strength and weaknesses of his and the Party
4 Investors’ claims and the Deloitte Entities’ defenses, the complex and disputed
5 issues of fact, the risks of pursuing the claims – including delay – and the substantial
6 recovery for distribution to Investors. The Amended Settlement Agreement presents
7 Investors with the option to exclude themselves from the Settlement and retain any
8 rights to pursue claims against the Released Deloitte Entities. Third Parties are also
9 protected and treated fairly. There is no Third Party bar order, and they may bring
10 contribution claims against the Released Deloitte Entities. Moreover, to the extent
11 the Releasing Claimants and Participating DLIF Investors obtain any final verdict or
12 judgment against a Third Party, the Amended Settlement Agreement clearly
13 provides that the verdict or judgment is to be reduced by an amount that corresponds
14 to the percentage of responsibility of the Released Deloitte Entities for common
15 damages, unless the governing law requires a different reduction.

16 **The Settlement Approval Procedures Comply with Due Process;** “Due
17 process requires notice and an opportunity to be heard.” *SEC. v. Elliott*, 953 F.2d
18 1560, 1566 (11th Cir. 1992). The procedures required to satisfy due process vary
19 “according to the nature of the right and to the type of proceedings.” *Id.* at 1566.
20 The Settlement approval procedures meet all of these requirements. The Receiver
21 has prepared four forms of notice: (i) Notice of Settlement; (ii) Opt Out Notice to
22 DLIF Investors; (iii) Opt Out Notice to DLIFF Investors; and (iv) Publication
23 Notice. All Interested Parties will receive the Notice of Settlement within seven days
24 of the entry of the Scheduling Order. (Scheduling Order at 3; Ex. C). The form and
25 content of this notice provide a reasonable opportunity to evaluate and object to the
26 Amended Motion, the Amended Settlement Agreement, and the Order Approving
27 the Settlement. It contains a description of the Settlement and the Order Approving
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1 Settlement, notifies Investors that they will also receive the appropriate Opt Out
2 Notice, provides a reasonable description and warning that the rights of the Investor
3 may be affected by the Amended Settlement Agreement, and of their right to object
4 to the settlement, and the manner in which to make such an objection.

5 DLIF and DLIFF Investors will also receive the appropriate Opt Out Notice.
6 (Scheduling Order at 3; Exs. H-I). The Opt Out Notices provide sufficient details on
7 the Amended Settlement Agreement, the recipient's option to exclude itself from the
8 Settlement or take no action and participate in the Settlement, object to the
9 Settlement, and the ramifications of each option.

10 In addition, the Receiver will publish the newspaper notice twice in *The Wall*
11 *Street Journal* and *The New York Times*, and once in *The Los Angeles Times*. All the
12 notices will also be published on the Receiver's website, which has been online since
13 the Receiver's appointment. (Scheduling Order at 3; Ex. D).

14 Accordingly, the Settlement Approval procedures furnish all Interested
15 Parties a full and fair opportunity to evaluate the Amended Motion, the Amended
16 Settlement Agreement and the Order Approving Settlement, and to object thereto.

17 **V. NOTICE OF THE HEARING ON THIS MOTION SHOULD BE**
18 **DEEMED APPROPRIATE AND SUFFICIENT**

19 The Receiver has served notice of the hearing on this Amended Motion to be
20 held on July 25, 2022 on the parties to the SEC Action and by mail to the known
21 non-investor creditors of the Receivership Entity. The Receiver has posted the
22 notice of hearing and the Amended Motion on the Receiver's website
23 (<https://cases.stretto.com/dli>). The Receiver has also directed Stretto, his Court-
24 approved claims agent, to e-mail the notice of the hearing to all Investors. The
25 Receiver believes this notice complies with the provisions of Local Civil Rule 66-7.
26 The Receiver requests that the Court approve this form of notice as reasonable,
27 appropriate, and the most cost-effective means of providing notice of the hearing on
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1 the Amended Motion under the circumstances, since there are approximately 975
2 investors both in the United States and overseas, and to the extent necessary, to
3 approve the notice given as reasonable, limited notice appropriate under the
4 circumstances and in the interests of time and cost.

5 **VI. CONCLUSION**

6 WHEREFORE, the Receiver respectfully requests that the Court grant the
7 Amended Motion and all relief requested therein.

8

9 Dated: May 24, 2022

DIAMOND MCCARTHY LLP

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By: /s/ Christopher D. Sullivan
Christopher D. Sullivan, counsel
For Bradley D. Sharp,
Permanent Receiver

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10 *Permanent Receiver*

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

**DECLARATION OF BRADLEY D.
SHARP IN SUPPORT OF AMENDED
MOTION OF RECEIVER FOR
APPROVAL OF SETTLEMENT
WITH DELOITTE ENTITIES;
ENTRY OF SCHEDULING ORDER;
AND ENTRY OF ORDER
APPROVING SETTLEMENT**

Date: July 25, 2022
Time: 1:30 p.m.
Dept.: Courtroom 7D
Place: United States District Court
Western Division
350 West 1st Street,
Los Angeles, CA 90012

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I, Bradley D. Sharp, declare and state:

1. I was appointed Receiver by this Court for defendant Direct Lending Investments LLC (“DLI”), and Direct Lending Income Fund, L.P. (“DLIF”), Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc., DLI Lending Agent, LLC, and DLI Assets Bravo LLC, and their successors, subsidiaries and affiliated entities (the “DLI Receivership Entities”) by order entered on April 1, 2019.

2. I submit this Declaration in support of the Amended Motion of Receiver for Approval of Settlement With Deloitte Entities; Entry of Scheduling Order; and Entry of Order Approving Settlement (“Amended Motion”)

3. I have personal knowledge of the facts set forth in this Declaration, and, if called to testify, could testify competently thereto.

4. Pursuant to the Preliminary Injunction Order and Order Appointing Permanent Receiver (Dkt. No. 10), I have been given the full powers of an equity receiver over all funds, property, assets, and choses in action belonging to, being managed by or in the possession or control of, the DLI Receivership Entities and to sue, collect, and take into possession all such property. I am also authorized to make agreements as may be necessary and advisable in discharging my duties as permanent receiver.

5. With control of DLIFF’s controlling shareholder, DLI, in my capacity as Receiver, in my business judgment, I thought it was best that I exercise the rights of DLI to place DLIFF into voluntary liquidation. I sought approval of this Court for before taking this action. In its order entered on May 14, 2019 (Dkt. No. 43), this Court authorized Christopher D. Johnson and me to accept appointment as joint voluntary liquidators and/ or joint official liquidators of Direct Lending Income Feeder, Fund, Ltd. (“DLIFF”) under the supervision of the Grand Court of the Cayman Islands. Christopher D. Johnson and I were appointed as joint voluntary liquidators and filed a petition to

1 place DLIFF’s liquidation under the supervision of the Grand Court of the Cayman
2 Islands. On July 25, 2019, the official liquidation of DLIFF was initiated by order of
3 the Grand Court of the Cayman Islands and Christopher Johnson and I were appointed
4 as Joint Official Liquidators (“JOLs”) of DLIFF.

5 6. On August 1, 2019, the Grand Court of the Cayman Islands entered a
6 supervision order enabling the JOLs to compromise certain claims.

7 7. On August 25, 2020, this Court entered an order approving a conflict
8 management protocol, that granted Christopher D. Johnson the sole and exclusive right
9 (subject to Cayman Court supervision) to act on behalf of DLIFF in the event of a
10 conflict under certain terms and conditions with respect to Recusal Issues. (Dkt. No.
11 289-2, 293). In other respects, Christopher D. Johnson and I are authorized in our
12 capacity as JOLs to act on behalf of DLIFF subject to Cayman court supervision.

13 8. On December 14, 2020 (Dkt. No. 337), this Court approved the
14 Distribution Plan, which provides for a priority of distributions from the receivership
15 estate. The Distribution Plan provides for a distribution methodology to Class 4B DLIF
16 Investors that is based upon the Rising Tide methodology.

17 9. In furtherance of my duties, I, along with the assistance of my retained
18 professionals, diligently investigated all potential claims against Deloitte & Touche
19 LLP (“Deloitte”), Deloitte Tax LLP, and Deloitte & Touche Cayman Islands
20 (collectively “Deloitte Entities”) arising out of the professional services provided by the
21 Deloitte Entities to the DLI Entities.¹ Based on an extensive investigation and the work
22 of my litigation counsel and a confidential expert consultant, I believe that the
23 receivership holds claims against the Deloitte Entities for professional negligence,
24 aiding and abetting breach of fiduciary duty, negligent misrepresentation, and breach of
25 contract. Further details on these claims, their strength and weaknesses, Deloitte’s
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27 ¹ DLI Entities means DLIFF together with the DLI Receivership Entities.
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1 defenses, the litigation risks, and complex disputed issues of fact and law are detailed
2 in the Declaration of Christopher D. Sullivan of Diamond McCarthy in support of the
3 Amended Motion. I, along with Diamond McCarthy and the confidential expert
4 consultant, diligently evaluated these factors in deciding to mediate in the first place
5 and then subsequently entering into a settlement.

6 10. On August 3, 2020, I, the JOLs, and the Deloitte Entities formally agreed
7 to engage in a mediation under the direction and supervision of the Honorable Daniel
8 Weinstein (Ret.) and Ambassador David Carden (Ret.). Judge Weinstein is one of the
9 nation’s most preeminent mediators of complex civil disputes and has mediated
10 numerous securities cases. Following the August 3, 2020 agreement, the Party Investors
11 joined the mediation process, agreeing to stay any actions that were already filed against
12 the Deloitte Entities or to forbear from filing any such actions. The Party Investors’
13 participation was valuable and gave me further comfort in concluding that the Investors²
14 as a whole would support the mediation and a potential settlement.

15 11. The Party Investors were active in the mediation process. The Party
16 Investors are composed of four investor groups: (1) investors represented by Levine
17 Kellogg Lehman Schneider + Grossman LLP, The Meade Firm P.C., and Reiser Law
18 P.C.; (2) investors that are plaintiffs in the action *Jackson v. Deloitte & Touche LLP*,
19 Case No. 20GDCV00419 (Cal. Super. Ct.) (“Jackson Action”), represented by Nystrom,
20 Beckman & Paris LLP (the “Jackson Group”); (3) investors represented by Bragar,
21 Eigel & Squire P.C; and (4) investors that are putative lead plaintiffs in the action
22 *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement Plan v.*
23 *Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.) (“Class
24 Plaintiffs”), represented by putative class counsel Ahdoot and Wolfson PC and Milberg
25 Phillips Grossman LLP. These four groups collectively represent approximately 180
26 _____

27 ² Capitalized terms not defined in this declaration have the same meaning as in the
28 Amended Confidential Settlement Agreement and Release.

1 investors. The Kosstrin Action was filed by the Class Plaintiffs against DLI, Brendan
2 Ross, Bryce Mason, Frank Turner, Rodney Omanoff, and Quarterspot, Inc.
3 (“Quarterspot”) on April 1, 2019 and remains stayed. The Jackson Group initiated the
4 Jackson Action against Deloitte, Deloitte Tax, and Opus Fund Services, LLC (“Opus”)
5 for negligent and intentional misrepresentations on April 28, 2020.

6 12. Through the mediation process, the JOLs, the Deloitte Entities, the Party
7 Investors, and I (collectively the “Parties”) engaged in a robust exchange of documents
8 and information related to their potential claims and defenses. On October 26, 2020,
9 professionals on behalf of the DLI Entities, as well as the Party Investors, made a four-
10 hour presentation to the mediators and the Deloitte Entities concerning the factual and
11 legal bases for their claims. On December 14, 2020, the Deloitte Entities made an
12 equally lengthy rebuttal presentation concerning their defenses.

13 13. A two-day mediation was held on December 21 and 22, 2020 with the
14 mediators, followed by a mediators’ proposal for a settlement, culminating in an
15 agreement-in-principle. Prior to the mediation, my team and I, and the JOLs’ team
16 prepared a confidential and privileged summary of recommendations regarding
17 potential claims and defenses. For purposes of mediation, Diamond McCarthy also
18 prepared a confidential and privileged analysis of the strengths and weaknesses of
19 Deloitte’s various defenses, the likely impact on damages, and settlement ranges given
20 the evaluated litigation risks. I studied these analyses, discussed the issues with my
21 counsel, and evaluated the litigation risks involved in pursuing the claims against the
22 Deloitte Entities, and the complex disputed issues of fact and law in deciding to settle
23 with the Deloitte Entities.

24 14. In the months that followed, the Parties negotiated and memorialized the
25 terms of the settlement. On April 8, 2021, I filed the Motion for (i) Approval of
26 Settlement with Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Bar
27 Order (“Previous Motion”). On June 14, 2021, the Court held a hearing on the Previous
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1 Motion. At the hearing, the Court directed certain questions and comments to the Parties
2 and requested supplemental briefing. Since that hearing, the Parties have expended
3 considerable time and thought in addressing the Court’s concerns and fashioning
4 workable solutions. The Parties, including my professionals and counsel for the Party
5 Investors, have worked diligently over a period of months to respond to the Court’s
6 comments, and to create a framework that will preserve both Deloitte’s desire for a
7 global resolution and the rights of the Investors. As a result, we have substantially
8 modified the Settlement. The terms of the modified Settlement are contained in the
9 Amended Confidential Settlement Agreement and Release (“Amended Settlement
10 Agreement”) attached to this declaration as Exhibit 1. It is the product of significant
11 effort and negotiations among the Parties.

12 15. While the Amended Settlement Agreement has been changed considerably
13 since I previously requested Court approval, as outlined in greater detail in the Amended
14 Motion, I wish to highlight a few notable provisions for the Court. The Amended
15 Settlement Agreement now provides Investors with the opportunity to exclude
16 themselves from participation in the Settlement (*i.e.* opt out of the Settlement). Any
17 Investor that does not wish to participate in the Settlement may exclude itself, will not
18 be bound by the Amended Settlement Agreement, and will retain any rights to pursue
19 claims against the Released Deloitte Entities. We have crafted robust notice procedures
20 that I believe will ensure Investors are fully informed of this right to opt out and the
21 consequences of doing so, including separate direct notices tailored to DLIF Investors
22 and DLIFF Investors (Exs. H and I to Amended Settlement Agreement). Additionally,
23 we have made it easy for Investors to opt out; they simply need to send a letter by e-
24 mail to my claims administrator Stretto stating they want to be excluded from the
25 Settlement. I will also publish a notice multiple times in various domestic and
26 internationally available newspapers (Ex. D to Amended Settlement Agreement) and all
27 the notices (Ex. C, D, H, and I to the Amended Settlement Agreement) will be published
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1 on the receivership's website.

2 16. The following are the carefully crafted and negotiated material
3 provisions in the Amended Settlement Agreement that pertain to the rights of Investors:

- 4 • Only Releasing Claimants and Participating DLIF Investors will release their
5 claims against the Deloitte Entities. (Amended Settlement Agreement, §§ 1.19,
6 1.25, 4.1(a); Order Approving Settlement at 7). Participating DLIFF Investors
7 will not release their claims (if any) against the Deloitte Entities because I
8 understand that Cayman Islands law prohibits such releases, while limiting the
9 ability of DLIFF Investors to assert direct claims against the Deloitte Entities
10 in numerous other ways.
- 11 • Only Releasing Claimants and Participating Investors will be barred from
12 prosecuting or seeking relief in any state or federal court, arbitration
13 proceeding, or other forum in the United States against the Released Deloitte
14 Entities, with respect to claims related to the professional services the Deloitte
15 Entities provided the DLI Entities. (Amended Settlement Agreement, §§ 1.18,
16 1.25, 4.1(b); Order Approving Settlement at 9).
- 17 • Opt-out Investors will not release their claims against the Deloitte Entities, nor
18 shall such claims be barred.
- 19 • The Settlement Amount of \$31,000,000, less attorneys' fees and expenses in
20 the amount of up to \$4.65 million (subject to Court approval), will be
21 distributed to DLIF and DLIFF under the allocation set forth in the previously
22 approved Claim Stipulation. Only Claimants and Participating DLIF Investors
23 shall be eligible to receive any portion of the Settlement Amount from the
24 Receiver. The portion of the Settlement Amount allocated to DLIFF will be
25 distributed to DLIFF Investors in accordance with Cayman Islands law.
26 (Amended Settlement Agreement, § 2.9).

27 The procedures set forth in the Amended Settlement Agreement in my judgment thus
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1 give Investors the opportunity to decide for themselves whether to retain any rights
2 to pursue claims against the Released Deloitte Entities or to participate in the
3 Settlement.

4 17. The parties, after thoughtfully considering the Court’s comments and the
5 objections filed to the previous Motion agreed to modify the settlement. The Amended
6 Settlement Agreement and the Order Approving Settlement (Ex. E to the Amended
7 Settlement Agreement) do not contain a Third Party claims bar. The Amended
8 Settlement Agreement only requests an order barring Releasing Claimants and
9 Participating Investors from prosecuting any claims or proceeding in the United States
10 against the Released Deloitte Entities with respect to all claims bases on professional
11 services provided by the Deloitte Entities to the DLI Entities. (Amended Settlement
12 Agreement, § 4.1(b)). The Order Approving Settlement Agreement is also similarly
13 structured to bar, restrain, and enjoin only the Releasing Claimants and Participating
14 Investors (Order Approving Settlement ¶ 9) and not all “Investors, and all other
15 Persons” (Dkt. 532- Ex. E at 10) on contrast to the corresponding proposed order
16 submitted with the Previous Motion did. Thus, Third Parties are not prohibited from
17 bringing claims against the Released Deloitte Entities.

18 18. To the best of my knowledge, the only Third Parties that have either been
19 sued or threatened with claims by the Claimants (and by virtue of those claims or
20 threatened claims may have claims for contribution against the Deloitte Entities) are: 1)
21 Opus, 2) Duff & Phelps, LLC, 3) EisnerAmper LLP, 4) QuarterSpot, and 5) certain DLI
22 officers. Among these Third Parties, only Opus has filed claims against certain of the
23 Deloitte Entities. In my judgment, Opus, and all other Third Parties stand to gain from
24 the Settlement because the Amended Settlement Agreement has a provision whereby
25 any final verdict or judgment obtained by or on behalf of any Claimant or Participating
26 DLIF Investor against any Third Party will be reduced by an amount that corresponds
27 to the percentage of responsibility of the Released Deloitte Entities for common
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1 damages, unless the law governing the final verdict or judgment provides otherwise
2 (Amended Settlement Agreement, § 4.1(d)). In my informed judgment, I believe that,
3 with these modifications, Third Parties are treated fairly under the Settlement.

4 19. In addition, the Settlement is no longer conditioned upon determination by
5 the court in *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super.
6 Ct.), that the *Jackson* plaintiffs and the Deloitte Entities entered into the Amended
7 Settlement Agreement in good faith pursuant to California Code of Civil Procedure
8 Section 877.6.

9 20. Also of note is the fact that the indemnity hold-back provision in the initial
10 settlement agreement has been removed. This provision required me to withhold \$2.5
11 million from the Settlement Amount to fund the Deloitte Entities' defenses against any
12 claims that may be asserted by Releasing Claimants. The removal of this provision frees
13 up an additional and unconditional \$2.5 million for distribution. This is beneficial to the
14 Receivership Entities and to Participating Investors.

15 21. With material modifications made to the Settlement after the June 14, 2021
16 hearing, particularly with respect to the rights of DLIFF Investors to opt out of the
17 Settlement and the ramifications of doing so, considerable effort was expended to
18 address issues relating to Cayman Islands' law and proceedings. Mr. Johnson and I, and
19 our Cayman Island counsel, thoughtfully reviewed and analyzed relevant Cayman
20 Islands' laws and negotiated over a period of months with the Deloitte Entities' Cayman
21 Islands' counsel over modifications to the Settlement and the timing and method of
22 appropriate proceedings in the Cayman Islands. Mr. Johnson and I, as JOLs, upon
23 privileged advice of Cayman Islands' counsel, concluded that the modifications to the
24 Settlement impacting DLIFF Investors require sanction (approval) from the Grand
25 Court of the Cayman Islands. Thus, the Amended Settlement Agreement requires the
26 JOLs to make an application by means of interlocutory summons for an order providing
27 that the JOLs have sanction to enter into the Settlement and the Amended Settlement
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1 Agreement (Amended Settlement Agreement, § 2.2). The JOLs have already filed the
2 summons. Understanding this Court’s busy caseload, we have drafted the Amended
3 Settlement Agreement to allow for the hearing on the Amended Motion to be held after
4 the Grand Court in the Cayman Islands issues its decision on the JOLs’ application for
5 entry of a sanction order.

6 . 22. I believe, in my informed judgment, that the terms of the Amended
7 Settlement Agreement fairly, reasonably, and adequately resolve potential claims
8 between the DLI Receivership Entities, Investors, and the Deloitte Entities. Before
9 settling, I along with the assistance of my retained professionals, including personnel at
10 Development Specialists Inc., Diamond McCarthy, and the confidential expert
11 consultant, carefully considered and vigorously investigated, analyzed, and evaluated
12 the claims against the Deloitte Entities; the counterclaims and defenses that would be
13 asserted to those claims, including the actual defenses asserted by the Deloitte Entities;
14 damage theories; and settlement ranges. The claims possessed by the Receiver and
15 JOLs, and those asserted by the represented Party Investors, and the Deloitte Entities’
16 defenses thereto are described in some detail in the Amended Motion and in the
17 accompanying Declaration of Christopher D. Sullivan. While the Settlement Amount
18 reflects the strength of those claims, the claims involve disputed facts, and complex and
19 novel issues of law that would require a substantial amount of time and expense to
20 litigate, with uncertainty as to the outcome of such litigation and any ensuing appeal. I
21 believe that Mr. Sullivan’s declaration accurately describes the complexity of the
22 litigation that would be necessary to prosecute these claims. In light of the relative
23 strengths and weaknesses of the claims and defenses, in my informed business
24 judgment, the Settlement offers the best and substantial recovery to the DLIF and
25 DLIFF estates, while avoiding prejudice to Third Parties or to Investors who decide to
26 opt out.

27 23. My decision to settle with the Deloitte Entities and to enter into the
28

1 Amended Settlement Agreement is guided by what, in my business judgment, I believe
2 is in the best interest of the receivership estate, the constituents of who primarily are the
3 Investors. For this reason, I welcomed the participation of the Party Investors in the
4 settlement process and in negotiating the terms of the Amended Settlement Agreement.
5 This active participation by Party Investors helped ensure that the concerns of the
6 Investors were represented in the process.

7 24. The Amended Settlement Agreement allows for all Investors to benefit
8 from its terms, but also provides them with the option to exclude themselves and retain
9 any rights to prosecute claims against the Deloitte Entities. The Amended Settlement
10 Agreement affords Investors with certain protections including: 1) robust notice
11 procedures designed to inform Investors of the Settlement, their right to exclude
12 themselves from it and the ramifications of doing so; 2) the right of Investors to submit
13 objections to the Settlement even if they elect to opt out; and 3) the opportunity for
14 Investors to be heard at the Final Approval Hearing.

15 25. Since the June 14, 2021 hearing, in consultation with my advisers, I have
16 determined that rather than distributing the proceeds of the Settlement to DLIF Investors
17 under the Rising Tide methodology, the better course is to distribute the Settlement
18 proceeds to Participating DLIF Investors on a *pro rata* basis based on the Net
19 Investment amount.³ This, based on my analysis, will enable 93 Investors who would
20 otherwise be above the Rising Tide level for distribution to obtain the benefits of the
21 Settlement should they elect to participate. Further details on the reasoning behind this
22 decision will be addressed in the Motion of Receiver for: (1) Disbursement of the
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25 ³ Net Investment” is defined in the Distribution Plan as a “DLIF Investor’s Total
26 Investment less Pre-Receiver’ship Returns.” “Total Investment” is defined as the
27 “total amount of cash invested by a DLIF Investor.” (Dkt. 321-2). “Pre-Receiver’ship
28 Returns” means the “amount of cash payments a DLIF Investor received from the
Receiver’ship Entities through March 31, 2019, as interest payments, redemptions, or
return of principal, irrespective of the characterization by the Receiver’ship Entities of
such payments.” (Dkt. 321-2).

1 Deloitte Settlement Proceeds Through a Modification of Distribution Plan; and (2)
2 Order Approving Form and/or Manner of Notice under Local Civil Rule 66-7 which
3 will be noticed for hearing in conjunction with this motion.

4 26. There are approximately 975 Investors in the Receivership Entity both in
5 the United States and overseas. I have a website for investors to obtain information
6 regarding the receivership (<https://cases.stretto.com/dli>). Additionally, I have directed
7 my Court-approved claims agent, Stretto, to send by email the notice of hearing on this
8 Amended Motion to all Investors.

9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct.

11 Executed on May 23, 2022, at San Juan Cap, California.

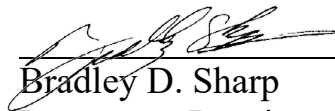
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15 Bradley D. Sharp
16 Permanent Receiver
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EXHIBIT 1

AMENDED CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This AMENDED CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (this “**Agreement**”) is by and between:

- 1) Bradley D. Sharp, as the permanent receiver (the “**Receiver**”) for the estate of Direct Lending Investments, LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership) (collectively, the “**DLI Receivership Entities**”);
- 2) Bradley D. Sharp and 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**”);
- 3) Investors in the DLI Entities that participated in the Mediation (defined below) that are identified in **Exhibit A** to this Agreement (“**Party Investors**”):
 - a) Those Investors represented by The Meade Firm P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP (the “**Century Group**”);
 - b) Those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super. Ct.), represented by Nystrom, Beckman & Paris LLP (the “**Jackson Group**”);
 - c) Those Investors represented by Lawrence Eigel of Bragar Eigel & Squire, P.C. (the “**Eigel Group**”);
 - d) Those Investors that are putative lead plaintiffs in the action *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.), represented by putative class counsel Ahdoot and Wolfson PC and Milberg Phillips Grossman LLP (the “**Class Plaintiffs**”).
- 4) Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte Entities**”).

The Receiver, JOLs, the DLI Entities, the Party Investors, and the Deloitte Entities are individually referred to herein as a “**Party**” and, collectively, as the “**Parties.**”

RECITALS

WHEREAS, on March 22, 2019, the United States Securities Exchange Commission filed a lawsuit in the United States District Court, Central District of California against Direct Lending Investments, LLC, titled *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (the “**SEC Action**”), alleging violations of federal securities laws, including section 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder;

WHEREAS, on April 1, 2019, the court in the SEC Action appointed the Receiver to serve as the permanent receiver of the estate of the DLI Entities;

WHEREAS, on July 25, 2019, the DLIFF official liquidation was initiated by order of the Grand Court of the Cayman Islands (the “**Grand Court**”) in FSD Cause No. 108 of 2019 (NSJ) (the “**Cayman Liquidation**”);

WHEREAS, on August 1, 2019, the Grand Court filed a supervision order in the Cayman Liquidation (the “**Supervision Order**”) that enabled the JOLs, *inter alia*, to compromise certain claims;

WHEREAS, in relevant part, the Supervision Order sanctioned the JOLs “on a joint and several basis” to exercise their powers to, *inter alia*, “bring or defend any action or other legal proceeding in the name and on behalf of [DLIFF]” (Supervision Order § 6(a));

WHEREAS, by agreement effective August 3, 2020, the Receiver, JOLs, and the Deloitte Entities determined to engage in a mediation process, under the direction and supervision of the Honorable Daniel Weinstein (Ret.) and Ambassador David Carden (Ret.) (the “**Mediators**”), to explore a mutually agreeable resolution of the Receiver’s and JOLs’ potential claims asserted by the Receiver and the JOLs on behalf of the DLI Entities against the Deloitte Entities;

WHEREAS, at various times following August 3, 2020, the Party Investors joined the mediation process, agreeing to stay any actions that had already been filed against the Deloitte Entities or to forebear from filing any other actions;

WHEREAS, on August 25, 2020, the court in the SEC Action entered an order approving the Receiver to enter into a conflict management protocol that, *inter alia*, granted Christopher D. Johnson the sole and exclusive right and power to act on behalf of DLIFF in the event of a conflict under certain terms and conditions with respect to Recusal Issues (SEC Action, Dkt. No. 289-2 at 17; *see also* Dkt. No. 293) and in other respects, Christopher D. Johnson and Bradley D. Sharp, in their capacity as JOLs, are otherwise authorized to act on behalf of DLIFF subject to court supervision;

WHEREAS, the Deloitte Entities, the Receiver/JOLs on behalf of the DLI Entities, and certain Party Investors engaged in a robust exchange of documents and information enabling the Parties to investigate their potential claims and defenses;

WHEREAS, on October 26, 2020, the Receiver, JOLs, and the Party Investors made a presentation to the Mediators and Deloitte Entities concerning the factual and legal bases for certain claims arising from the professional services provided by the Deloitte Entities to the DLI Entities;

WHEREAS, on December 14, 2020, the Deloitte Entities made a rebuttal presentation to the Mediators, Receiver, JOLs, and Party Investors concerning the factual and legal defenses to those claims discussed in the October 26, 2020 presentations;

WHEREAS, on December 21 and 22, 2020, the Parties engaged in mediation with the Mediators (the “**Mediation**”), and the Parties agreed on terms to resolve, on a global basis, all claims that the Receiver, JOLs, Party Investors, or any other Investor or entity has asserted or could assert against the Deloitte Entities arising out of or in any way related to the professional services provided by the Deloitte Entities to the DLI Entities;

WHEREAS, the Parties executed the Confidential Settlement Agreement and Release (“**Original Settlement Agreement**”) on April 6-8, 2021, and the Receiver filed a Memorandum of Points and Authorities in Support of Motion of Receiver for: (1) Approval of Settlement With Deloitte Entities; (2) Entry of Scheduling Order; and (3) Entry of Bar Order (the “**Receiver’s Motion**”) on April 8, 2021, requesting that the court in the SEC Action approve, on a preliminary basis, the Original Settlement Agreement;

WHEREAS, on June 14, 2021, the court in the SEC Action held a hearing on the Receiver’s Motion and directed certain questions and instructions to the Parties;

WHEREAS, the Parties, having taken the court in the SEC Action’s questions and instructions under due consideration, are now memorializing their settlement in an amended long-form writing; and

WHEREAS, there has been no admission or finding of facts or liability by or against any of the Parties, and nothing herein should be construed as such.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS

In addition to the terms defined above, the following terms shall have the meanings set forth below:

1.1. “**Affiliate(s)**” and “**Affiliated**” means, with respect to any Person, a Person that directly or indirectly controls, is controlled by, or is under common control with such Person, a member of such Person’s immediate family, or, if such Person is a partnership, any general partner or any Person controlling such general partner. For purposes of this definition, “control” (including “controlled by” and “under common control with”) means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, by contract, or otherwise.

1.2. “**Claimant(s)**” means, collectively, the Receiver, the JOLs, the DLI Entities, and the Party Investors.

1.3. “**Claimants’ Counsel**” means the law firms that represent Claimants in the Mediation, including Diamond McCarthy LLP, The Meade Firm P.C., Reiser Law P.C., Levine

Kellogg Lehman Schneider + Grossman LLP, Nystrom Beckman & Paris LLP, Bragar Eigel & Squire, P.C., Ahdoot and Wolfson PC, and Milberg Phillips Grossman LLP.

1.4. “**Class Action**” means the lawsuit pending in the United States District Court, Central District of California titled *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case No. 19-cv-02452.

1.5. “**Confidential Information**” means the communications and discussions in connection with the negotiations that led to the Settlement and this Agreement, including the Mediation and related communication that are also separately subject to the terms of the Parties’ Non-Use/Non-Waiver and Confidentiality Agreement. Confidential Information also includes the existence and terms of the Settlement and this Agreement, but only until the filing of this Agreement and related documents with the court in the SEC Action.

1.6. “**Day(s)**” means a calendar day; provided, that when a period that is counted by a number of days would result in the requirement that a particular action be taken on a Saturday, Sunday, or federal holiday, the period shall continue to run until the end of the next calendar day that is not a Saturday, Sunday, or federal holiday.

1.7. “**DLIF**” means Direct Lending Income Fund, L.P.

1.8. “**DLIF Investor(s)**” means individually and collectively, any Person that invested, through the purchase of limited partnership interests or otherwise, in DLIF.

1.9. “**DLIFF Investor(s)**” means individually and collectively, any Person that invested, through the purchase of shares, in DLIFF.

1.10. “**Effective Date**” means the first day by which all of the following events shall have occurred: (a) the Execution Date (defined below); (b) entry of the Order Approving Settlement (defined below) by the Court in the SEC Action as described in Section 2.3; (c) the Order Approving Settlement becoming Final; and (d) dismissal with prejudice of all claims against the Deloitte Entities in the Jackson Action (defined below) as described in Section 2.4.

1.11. “**Execution Date**” means the first day by which the Parties’ duly authorized representatives have executed this Agreement.

1.12. “**Final**” means unmodified after the conclusion of, or expiration of, any right of any Person to pursue any and all possible forms and levels of appeal, reconsideration, or review, judicial or otherwise, including by a court or forum of last resort, wherever located, whether automatic or discretionary, or whether by appeal or otherwise; provided however, that the Sanction Order shall be deemed to be Final if, within fourteen days after entry of the Sanction Order, no party has sought to appeal the Sanction Order or any appeal of the Sanction Order shall have been resolved and the Sanction Order shall have been affirmed in all respects.

1.13. “**Investor(s)**” means, individually and collectively, any Person that invested, via the purchase of limited partnership interests or otherwise, in any of the DLI Entities, including but not limited to the Party Investors and Participating Investors.

1.14. “**Jackson Action**” means the lawsuit pending in the Superior Court of the State of California, County of Los Angeles titled *Alfred Jackson et al. v. Deloitte & Touche LLP et al.*, Case No. 20-GDCV-00419.

1.15. “**Notice(s)**” means a communication, in substantially the form attached hereto as **Exhibit C or Exhibit D**, describing: (a) the material terms of the Settlement; (b) the material terms of this Agreement; (c) the rights and obligations of the Parties with regard to the Settlement and this Agreement; (d) the deadline for the filing of objections to the Settlement, this Agreement, and the Order Approving Settlement, and (e) the date, time, and location of the hearing to consider final approval of the Settlement, this Agreement, and the Order Approving Settlement.

1.16. “**Opt-out Investor(s)**” means any Investor that excludes itself from the Settlement pursuant to procedures described in the Opt-out Notices.

1.17. “**Opt-out Notice(s)**” means a communication, in substantially the form attached hereto as **Exhibit H or Exhibit I**, describing: (a) the material terms of the Settlement; (b) the material terms of this Agreement; (c) the rights and obligations of the Parties with regard to the Settlement and this Agreement; (d) the procedures by which Investors may exclude themselves from the Settlement; (d) the deadline for the filing of objections to the Settlement, this Agreement, and the Order Approving Settlement, and (e) the date, time, and location of the hearing to consider final approval of the Settlement, this Agreement, and the Order Approving Settlement.

1.18. “**Participating Investor(s)**” means any Investor, including affiliates, successors, and assigns, that does not exclude itself from the Settlement pursuant to the procedures described in the Opt-out Notices.

1.19. “**Participating DLIF Investor(s)**” means a DLIF Investor that is also a Participating Investor. For the avoidance of doubt, the term Participating Investor(s) shall at all times in this Agreement be deemed to include both Participating DLIF Investor(s) and Participating DLIFF Investor(s), unless expressly provided otherwise.

1.20. “**Participating DLIFF Investor(s)**” means a DLIFF Investor that is also a Participating Investor. For the avoidance of doubt, the term Participating Investor(s) shall at all times in this Agreement be deemed to include both Participating DLIF Investor(s) and Participating DLIFF Investor(s), unless expressly provided otherwise.

1.21. “**Person(s)**” means any natural person, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, governmental authority, affiliated group, or other entity or organization (incorporated or unincorporated).

1.22. “**Related Actions**” means, collectively, the SEC Action, the Class Action, and the Jackson Action.

1.23. “**Released Claims**” means, to the fullest extent that the law permits their release, all past, present, and future claims of any nature whatsoever, including, without limitation, all claims, suits, actions, allegations, damages (including, without limitation, contributory, compensatory, punitive, exemplary, rescissory, direct, consequential or special damages, restitution, and disgorgement), liabilities, causes of action, complaints, lawsuits, responsibilities, demands, rights, debts, penalties, costs, expenses, fees, injunctive relief, attorneys’ fees, expert or consulting fees, prejudgment interest, indemnities, duties, losses, and obligations of any kind, known or unknown, foreseen or unforeseen, whether or not concealed or hidden, asserted or unasserted, existing or contingent, direct or indirect, anticipated or unanticipated, asserted or that could have been asserted by, or on behalf of, for the benefit of, or in the name of the Claimants or Participating DLIF Investors, whether legal, contractual, rescissory, statutory, or equitable in nature, whether arising under federal, state, common or foreign law, that now exist, have ever existed, or might ever exist, from the beginning of time in perpetuity, that are based upon, arise out of, or are related in any way to: (a) the professional services provided by the Deloitte Entities to the DLI Entities; (b) the conduct, transactions, or occurrences set forth in any of the pleadings in the Related Actions; (c) the Related Actions; and (d) the conduct and subject matter of the Mediation, Settlement negotiations, and the negotiation of this Agreement (except for representations or obligations expressly included in this Agreement), including without limitation fraud in the inducement thereof.

1.24. “**Released Deloitte Entities**” means (a) the Deloitte Entities; (b) the Deloitte Entities’ predecessors, successors, Affiliates, Subsidiaries, divisions, assignors, and assignees; (c) each of the foregoing’s past, present, and future officers, directors, board and board members, principals, partners, officials, employees, Subsidiaries, parents, Affiliates, divisions, joint venturers, contractors, subcontractors, subrogees, offices, controlled Persons, predecessors, successors, assignors, assigns, transferees, heirs, executors, shareholders, owners, investors, accountants, auditors, advisors, trustees, fiduciaries, consultants, agents, representatives, nominees, attorneys, partners, associates, senior counsel, managers, and members, in each case individually and collectively, together with any of their respective predecessors and successors in interest; and (d) each of the Deloitte Entities’ insurers, reinsurers, excess insurers, underwriters, and claims administrators. For avoidance of doubt, “Released Deloitte Entities” include, without limitation, Deloitte & Touche, LLP, Deloitte Tax LLP, Deloitte & Touche LLP (Cayman Islands), Deloitte LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Transactions and Business Analytics LLP, Deloitte Services LP, and Deloitte USA LLP.

1.25. “**Releasing Claimants**” means the Claimants and each of their agents, representatives, managers, employees, attorneys (in his or her capacity as attorney for the Claimants or any one of the Claimants), heirs, administrators, executors, assigns, predecessors and successors in interest, insurers, reinsurers, excess insurers, and any other Person claiming by, through, on behalf of, or for the benefit of any of them.

1.26. “**Sanctions**” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by any relevant sanctions authority with jurisdiction over any Party to this Agreement.

1.27. “**Settlement**” means the agreed resolution of the Released Claims in the manner set forth in this Agreement.

1.28. “**Subsidiary**” and “**Subsidiaries**” means, with respect to any Person (including any natural person, partnership, corporation, limited liability company, trust, joint venture, affiliated group, or other entity), an entity in which at least 10% of the outstanding equity or financial interests are owned, directly, indirectly, or beneficially by such Person.

1.29. “**Third Party**” means a nonparty to this Agreement that has been or may be sued by any of the Claimants or Participating Investors for claims arising out of, relating to, or in connection with the DLI Entities.

SECTION 2. THE SETTLEMENT

2.1. **Settlement Amount.** The Deloitte Entities agree to pay as the settlement amount the total sum of thirty-one million U.S. dollars (\$31,000,000) (the “**Settlement Amount**”). The Settlement Amount shall be deposited into escrow account(s) to be identified by the Receiver (the “**Settlement Fund**”). No Deloitte Entity shall have any obligation to pay Claimants, Claimants’ Counsel, or any other Person any monetary consideration in excess of the Settlement Amount.

2.2. **Grand Court Sanction.** The JOLs shall make an application to the Grand Court seeking an order holding that the JOLs have sanction to enter into the Settlement and Agreement in their entirety without modification or limitation (other than immaterial modifications or limitations, with materiality to be agreed between the JOLs and the Deloitte Entities), and to take all necessary steps to consummate the Settlement, including but not limited to supporting approval of the Settlement by the court in the SEC Action (the “**Sanction Order**”).

(a) Procedures for Securing Grand Court Sanction.

(i) **Summons:** Within seven (7) Days after the Execution Date, the JOLs shall make an application by way of interlocutory summons, including any supporting evidence, to the Grand Court requesting the Grand Court to make the Sanction Order (the “Summons”).

(ii) **Preparation and Prosecution of the Summons:** The JOLs shall be responsible for the preparation of the Summons and all steps required to progress it to conclusion in a timely manner. The JOLs shall keep the Deloitte Entities informed as to any material developments.

(iii) **Notice of Summons:** The JOLs shall be responsible for the dissemination of the Summons to DLIFF Investors, which will include the day by which any objection to the requested Sanction Order must be notified to the JOLs. The JOLs shall give notice of the Summons, and any supporting documents as appropriate, to DLIFF Investors in accordance with any directions order issued by the Grand Court. The JOLs shall seek a directions order that provides that a) the JOLs shall serve the Summons on the liquidation committee and, by way of and so as to give notice, send the Summons to the DLIFF Investors by email within two (2)

business days of receipt by the JOLs of the sealed directions order, and b) any party served with or given notice of the Summons who intends to appear at any hearing of the Summons or object to the grant of the Sanction Order shall notify the JOLs accordingly by email within fourteen (14) days of delivery of the Summons to them.

(iv) No Recourse Against the Released Deloitte Entities

Regarding the Summons: The Released Deloitte Entities shall have no responsibility, obligation, or liability whatsoever for, and no Party or any other Person shall have any recourse against any of the Released Deloitte Entities with respect to, the cost associated with providing the Summons to DLIFF Investors pursuant to this Agreement. As of the Execution Date, all Claimants, and all other Persons that Claimants represent or on whose behalf Claimants have been empowered to act by any court fully, finally, and forever release and relinquish the Released Deloitte Entities from any and all such responsibility, obligation, and liability.

(v) Parties to Advocate: The JOLs shall take all reasonable steps to advocate and encourage the Grand Court to approve, as soon as possible consistent with Cayman law and procedure, the Settlement and this Agreement and to make the Sanction Order.

(vi) No Challenge: No Party shall challenge the approval of the Settlement, this Agreement, or the Summons, and no Party will encourage or assist any other Party or Third Party in challenging the Settlement, this Agreement, or the Summons.

2.3. Court Approval in the SEC Action. The Receiver shall seek approval by the court in the SEC Action of the Settlement and the terms of this Agreement in their entirety without modification or limitation, and the entry of an order by the court in the SEC Action, exactly in the form of **Exhibit E** hereto (the “**Order Approving Settlement**”), with no modification or limitations (other than immaterial modifications or limitations, with materiality to be determined by the Deloitte Entities in their good-faith discretion).

(a) Procedures for Securing Court Approval in the SEC Action

(i) Motion: Within one (1) Day after the Summons has been filed with the Grand Court, the Receiver shall submit to the court in the SEC Action a motion requesting entry of an order substantially in the form attached hereto as **Exhibit B** (the “**Scheduling Order**”): (a) preliminarily approving the Settlement; (b) approving the content and plan for publication and dissemination of the Notices; (c) setting the day by which any objection to the Settlement or this Agreement must be filed; and (d) scheduling a hearing to consider final approval of the Settlement and entry of the order required by Section 2.3 of this Agreement (the “**Motion for Approval in the SEC Action**”). With respect to the content and plan for publication and dissemination of the Notices, the Receiver will propose that: (a) Notices in substantially the form attached hereto as **Exhibit C** and **Exhibit D**, and Opt-out Notices in substantially the form attached hereto as **Exhibit H**, and **Exhibit I** be sent or published as specified in the Scheduling Order. The Receiver’s Motion for Approval in the SEC Action shall additionally request that the court in the SEC Action, *inter alia*, enter in the SEC Action an Order Approving Settlement in exactly the form attached hereto as **Exhibit E**. In advance of filing the motion papers to

accomplish the foregoing, the Receiver shall provide the Deloitte Entities with a reasonable opportunity to review and comment on such motion papers.

(ii) Notice Preparation and Dissemination: The Receiver shall be responsible for the preparation and dissemination of the Notices pursuant to this Agreement and as directed by the court in the SEC Action.

(iii) No Recourse Against the Released Deloitte Entities Regarding Notice: The Released Deloitte Entities shall have no responsibility, obligation, or liability whatsoever for, and no Party or any other Person shall have any recourse against any of the Released Deloitte Entities with respect to, the cost associated with providing Notice pursuant to this Agreement and as directed by the court in the SEC Action or any claims that may arise from or relate to the Notice process. As of the Execution Date, all Claimants, and all other Persons that Claimants represent or on whose behalf Claimants have been empowered to act by any court fully, finally, and forever release and relinquish the Released Deloitte Entities from any and all such responsibility, obligation, and liability.

(iv) Parties to Advocate: The Parties shall take all reasonable steps to advocate and encourage the court in the SEC Action to approve the Settlement and this Agreement.

(v) No Challenge: No Party shall challenge the approval of the Settlement or this Agreement, or the Motion for Approval in the SEC Action, and no Party will encourage or assist any other Party or Third Party in challenging the Settlement or this Agreement, or the Motion for Approval in the SEC Action.

(vi) Hearing on Motion and Obligation to Withdraw Motion. Hearing on the Motion for Approval in the SEC Action shall be noticed at least sixty (60) Days after the Motion for Approval in the SEC Action is filed (the **“Hearing Date”**). In the event the Summons has not been decided by the Hearing Date, the Receiver shall request that the Hearing Date be postponed for a period of time sufficient to allow the Grand Court to issue a decision on the Summons. In the event the Sanction Order is not entered by the Grant Court as described in Section 2.2, or such order does not become Final, the Receiver shall withdraw the Motion for Approval in the SEC Action.

2.4. Dismissal of the Jackson Action. Within seven (7) Days of entry of the Order Approving Settlement by the court in the SEC Action, the Jackson Group shall dismiss with prejudice all claims against the Deloitte Entities in the Jackson Action. The Deloitte Entities may, at their sole election, move for entry of an order determining the good faith nature of the Jackson Group’s Settlement with the Deloitte Entities pursuant to Section 877.6 of the California Code of Civil Procedure and barring contribution claims by any alleged joint tortfeasors against the Deloitte Entities. Should the Deloitte Entities elect to make such motion, the Jackson Group agrees not to oppose the motion and to take all reasonable steps to advocate and encourage the court in the Jackson Action to grant the motion.

2.5. All Parties' Right to Withdraw. All Parties shall have the right to withdraw in the event:

(a) The court in the SEC Action does not provide the approval and enter the order described in Section 2.3, or such order does not become Final. Pursuant to this Section 2.5(a), any Party shall have the right to withdraw its agreement to the Settlement and to this Agreement by providing thirty (30) Days written notice of withdrawal to the other Parties. Notwithstanding the foregoing, in the event the court in the SEC action does provide the approval and enter the order described in Section 2.3, or such order does become Final, within any thirty (30) Day withdrawal notice period, such notice of withdrawal shall become ineffective, and all Parties' right to withdraw its agreement to the Settlement and to this Agreement pursuant to this Section 2.5(a) shall expire.

(b) The Grand Court does not enter the Sanction Order within sixty (60) Days from the day on which the JOLs file the Summons as described in paragraph 2.2(a)(i), or if the Summons is not submitted within seven (7) Days after the Execution Date as required in paragraph 2.2(a)(i). Pursuant to this Section 2.5(b), any Party shall have the right to withdraw its agreement to the Settlement and to this Agreement by providing thirty (30) Days written notice of withdrawal to the other Parties. Notwithstanding the foregoing, in the event the Grand Court enters the Sanction Order within any thirty (30) Day withdrawal notice period, such notice of withdrawal shall become ineffective, and all Parties' right to withdraw its agreement to the Settlement and to this Agreement pursuant to this Section 2.5(b) shall expire.

2.6. Deloitte Entities' Right to Withdraw. The Deloitte Entities shall have the sole right to withdraw from the Settlement in the event that Opt-out Investors exceed a certain agreed upon threshold (the "**Opt-out Threshold**"). Simultaneously herewith, counsel for the Parties are executing a confidential Supplemental Agreement Regarding Requests for Exclusion (the "**Supplemental Agreement**"). The Supplemental Agreement sets forth certain conditions under which the Deloitte Entities shall have the option to withdraw from the Settlement and render this Agreement null and void in the event that the Opt-out Threshold is reached. The Parties agree to maintain the confidentiality of the Supplemental Agreement, which shall be submitted for review to the court in the SEC Action *in camera* and shall be submitted to the Grand Court as a confidential document. The Supplemental Agreement shall not be filed in any other court unless a dispute arises as to its terms, or as otherwise ordered by a court of competent jurisdiction, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by a court of competent jurisdiction. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by a court of competent jurisdiction, the Parties will undertake to have the Supplemental Agreement submitted to the relevant court *in camera* or under seal.

2.7. Effect of Withdrawal. In the event that any Party withdraws its agreement to the Settlement or this Agreement in accordance with Sections 2.5 or 2.6, each Party shall be returned to such Party's respective position immediately prior to such Party's execution of this Agreement, but with all applicable tolling agreements between Claimants and the Deloitte Entities extended until thirty (30) Days after any Party withdraws from this Agreement. This Agreement will be null and void and of no further force or effect whatsoever (other than the

terms of this Section 2.7 and Section 6 of this Agreement, which shall survive), shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and shall not be the subject or basis for any claims by any Party against any other Party. To exercise its right under this Section to withdraw its agreement to the Settlement and to this Agreement, a Party must provide written notice of such withdrawal to all other Parties.

2.8. Payment of Settlement Amount. No later than fifteen (15) Days after the Effective Date or when the Receiver provides, in writing, account information, wire-transfer instructions, and Form(s) W-9 (whichever date is later), the Deloitte Entities will pay the Settlement Amount into escrow account(s) identified by the Receiver. Claimants have agreed among themselves, and with Claimants' Counsel, on the method for allocation of the Settlement Amount and for the payment of attorneys' fees and expenses.

2.9. Allocation and Distribution of Settlement Amount. The Deloitte Entities shall have no involvement in, and no responsibility, duty, or liability for, the allocation and distribution of the Settlement Amount among the Claimants, Claimants' Counsel, any Investors, and/or any other Persons, except that the Receiver and the JOLs have represented to the Deloitte Entities and agree that (a) only Claimants, and Participating DLIF Investors, shall be eligible to receive any portion of the Settlement Amount from the Receiver and the Receiver shall implement reasonable controls to limit distributions of the Settlement Amount to Claimants and Participating DLIF Investors; (b) the distribution of the Settlement Amount to DLIF Investors will be determined in accordance with Cayman Islands law; and (c) a Participating DLIF Investor's receipt of their allocation of the Settlement Amount shall not reduce the distributions or payments from the Receiver to which that Investor would otherwise have been entitled. The Receiver, the JOLs, DLI Entities and Party Investors have entered into a separate Agreement Regarding Disbursement of Attorneys' Fees ("Attorneys' Fees Agreement"), attached hereto as Exhibit F. Section 1.2 of the Attorneys' Fees Agreement contemplates, among other things, that counsel for the Party Investors will move in the SEC Action for an award of attorneys' fees and reimbursements of expenses up to the full amount of the Attorneys' Fund as defined in the Attorneys' Fees Agreement ("Motion for Approval of Attorneys' Fund"). The Deloitte Entities agree not to oppose or otherwise object to the Motion for Approval of Attorneys' Fund, including the proposed order granting the Motion for Approval of Attorneys' Fund in the form attached hereto as Exhibit G. For the avoidance of doubt, the Deloitte Entities have no responsibility, duty, or liability for, or obligation arising under, the Attorneys' Fees Agreement, and any breach or failure of the Attorneys' Fees Agreement shall have no impact on this Agreement.

2.10. Release of Liability for Allocation. The Order Approving Settlement shall contain a finding and order reasonably acceptable to the Deloitte Entities that the Deloitte Entities shall have no liability related to the allocation or distribution of the Settlement Amount between and among the Claimants, Participating DLIF Investors, and their respective counsel. The releases and covenants set forth in Section 4 shall not be impacted in any way by any dispute that exists or that later arises between Claimants, Participating DLIF Investors, and their respective counsel, lienholders, or any of them concerning their share of the Settlement Amount or concerning their right, title, or interest in any portion of the Settlement Amount.

2.11. No Admission or Evidence. Nothing in this Agreement shall be construed as an admission by any Party or as evidence in support of any wrongdoing or liability of any kind.

SECTION 3. TAX TREATMENT

3.1. Taxes/Costs. The payment of all taxes imposed as a result of the performance of this Agreement is solely the obligation of the Claimants, and shall be paid exclusively by Claimants. The Deloitte Entities shall have no liability for the taxes or the tax treatment of any of the sums paid pursuant to this Agreement, and each of the Claimants releases and forever discharges the Deloitte Entities from any liability related to taxes or the tax treatment of any of the sums paid pursuant to this Agreement and agrees to indemnify and hold the Deloitte Entities harmless from and against any claim regarding the proper tax treatment of the Settlement or the Deloitte Entities' satisfaction of its obligations under applicable tax law. For the avoidance of doubt, each Claimant is agreeing to hold Deloitte Entities harmless from their own claims regarding proper tax treatment or satisfaction of obligation under applicable tax law and to indemnify Deloitte Entities for any claims made by Claimants or by Claimants' Counsel.

3.2. No Representations Regarding Tax Treatment. The Deloitte Entities have not made, and the Claimants do not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement.

3.3. Form W-9 and Documentation. In consideration of the releases and covenants provided in this Agreement, Claimants' Counsel shall provide to Deloitte Entities correct taxpayer identification numbers on Form(s) W-9 and correct account information and wiring instructions for the Settlement payment concurrent with the execution of this Agreement.

SECTION 4. RELEASES AND OTHER COVENANTS

4.1. Releasing Claimants' and Participating Investors' Releases:

(a) The Releasing Claimants' and Participating DLIF Investors' Release of Released Deloitte Entities. Each Releasing Claimant and each Participating DLIF Investor, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, shall fully, finally, and forever release, covenant not to sue, and discharge each of the Released Deloitte Entities from any and all Released Claims held by, on behalf of, for the benefit of, or in the name of the Releasing Claimant.

(b) Bar Order. Each Releasing Claimant and each Participating Investor shall forever be barred and enjoined from prosecuting against any of the Released Deloitte Entities, now or at any time in the future, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including but not limited to litigation, arbitration, or other proceeding, in any state or federal court, arbitration proceeding, or other forum in the United States that relates to, is based upon, arises from, or is connected with the professional services provided by the Deloitte Entities to the DLI Entities.

(c) The Releasing Claimants' and Participating DLIF Investors' Covenant Not to Sue Released Deloitte Entities. Each Releasing Claimant and Participating DLIF Investor, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, shall covenant not to cause, authorize, voluntarily assist or cooperate in, or induce any Third Party to pursue the commencement, maintenance, or prosecution of any action or proceeding (whether in the United States, the Cayman Islands, or elsewhere) relating to or arising from any Released Claims against any of the Released Deloitte Entities. This provision does not restrict a Releasing Claimant or Participating DLIF Investor from testifying truthfully if subpoenaed as a witness.

(d) The Proportionate Fault Reduction of Any Final Verdict or Judgment Obtained by a Releasing Claimant or Participating DLIF Investor Against Any Third Party. Any final verdict or judgment obtained by or on behalf of any Claimant or Participating DLIF Investor against any Third Party shall be reduced by an amount that corresponds to the percentage of responsibility of the Released Deloitte Entities for common damages. However, where the law governing such final verdict or judgment ("**Other Governing Law**") requires a reduction in a different amount, the final verdict or judgment shall be reduced by an amount as provided by such Other Governing Law.

4.2. Other Covenants

(a) Claimants' Settlements with Third-Parties. Each Releasing Claimant covenants and agrees that in the event any Releasing Claimant settles with a Third Party, the Claimant will require as a term and condition of settlement that the Third Party release the Released Deloitte Entities from all potential claims arising out of, directly or indirectly, the Released Claims, including but not limited to claims for contribution or indemnity. The Released Deloitte Entities shall provide reciprocal releases in favor of such Third Party.

(b) Further Assurances. The Receiver, for himself and on behalf of the DLI Entities, hereby covenants and agrees that he shall take, and shall cause the DLI Entities to take, all actions reasonably necessary to enforce and carry out the terms of the Scheduling Order, the Order Approving Settlement, and this Agreement, including all reasonable requests by the Deloitte Entities to enforce the Scheduling Order, the Order Approving Settlement, and this Agreement. Similarly, the JOLs, for themselves and on behalf of DLIFF, hereby covenant and agree that they shall take, and shall cause DLIFF to take, all actions reasonably necessary to enforce and carry out the terms of this Agreement. For the avoidance of doubt, the Receiver and the JOLs shall be obligated to seek enforcement of the Order Approving Settlement in the event any person or entity brings or seeks to bring a claim against any of the Deloitte Entities that may be prohibited by, or in violation of, the Order Approving Settlement. The Receiver's and the JOLs' obligation to seek enforcement of the Order Approving Settlement described in this Section shall continue for the duration of their appointments as the receiver for the DLI Entities and liquidator for DLIFF, respectively. Nothing in this Agreement prevents the Deloitte Entities from also seeking to enforce the Order Approving Settlement.

4.3. Actions Relating to Enforcement of Agreement. For avoidance of doubt, no provision in this Section 4 shall preclude any claims relating to the breach or enforcement of this Agreement.

4.4. Releases. The releases in this Section 4 include an express, informed, knowing and voluntary waiver and relinquishment of the Released Claims to the fullest extent permitted by law. The Parties acknowledge that they may have sustained damages, losses, costs or expenses that are presently unknown and unsuspected and that such damages, losses, costs, or expenses that may have been sustained may give rise to additional damages, losses, costs, or expenses in the future. The Parties further acknowledge that they have negotiated this Agreement taking into account presently unsuspected and unknown claims, counterclaims, causes of action, damages, losses, costs and expenses, and the Parties voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state, federal, or foreign statute, rule or common law principle, in law or equity, relating to limitations on general releases. Specifically, each Party hereby expressly waives any rights it may have under California Civil Code § 1542 (or any other similar law in any jurisdiction) which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4.5. Agreement as Defense. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit, or other proceeding, which may be instituted, prosecuted, or maintained in breach of this Agreement. The Parties agree that violation of this Agreement will constitute irreparable injury sufficient to support the imposition of injunctive relief.

SECTION 5. REPRESENTATIONS AND WARRANTIES

5.1. Representations and Warranties of Claimants and Their Counsel. Claimants hereby represent and warrant to the Deloitte Entities that the statements contained in this Section 5.1 are true and correct.

(a) Authority. Claimants' Counsel hereby represent and warrant to the Deloitte Entities, as a material term of this Agreement, that they have obtained all requisite power and authority to enter into this Agreement on behalf of each Claimant, and to consummate the releases and covenants contemplated hereby. Each Claimant has been informed of the terms of this Agreement and agrees to the execution of this Agreement and to carry out Claimants' obligations hereunder. The execution, delivery, and performance by Claimants' Counsel of this Agreement, the consummation of the releases and covenants contemplated hereby, have been duly authorized by all requisite action on the part of each Claimant.

(b) Enforceability. Each Claimant hereby represents and warrants to the Deloitte Entities, as a material term of this Agreement, that this Agreement constitutes legal, valid, and binding obligations of each Claimant, enforceable against each Claimant in accordance with its terms.

(c) No Conflicts; Consents. Each Claimant hereby represents and warrants to the Deloitte Entities, as a material term of this Agreement, that the execution, delivery, and performance by Claimants' Counsel of this Agreement, and the consummation of the releases and covenants contemplated hereby, do not and will not: (i) violate or conflict with any organizational documents with respect to that Claimant; or (ii) violate or conflict with any governmental or court order or law applicable to any Claimants. Each Claimant hereby represents and warrants to the Deloitte Entities, as a material term of this Agreement, that no consent, approval, waiver or authorization is required to be obtained by Claimants' Counsel from any additional Person in connection with the execution, delivery, and performance of this Agreement by Claimants' Counsel and each Claimant and the consummation of the releases and covenants contemplated hereby.

(d) No Assignments or Liens. Each Claimant hereby represents and warrants to the Deloitte Entities, as a material term of this Agreement, that that Claimant is the proper party to assert the Released Claims, and that, except for a transfer upon the death or incapacity of a Claimant, that Claimant has not assigned or in any way conveyed, transferred, or encumbered all or any portion of the claims or rights released pursuant to Section 5.

(e) No Sanctions Violation. Claimants will not, directly or indirectly, use the proceeds of the Settlement Fund or lend, contribute, or otherwise make available such proceeds from the Settlement Fund to any Subsidiary, joint venture partner, or other Person: (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Claimant).

5.2. Receiver and JOLs' Warranties. The Receiver and JOLs represent and warrant to the Deloitte Entities, as a material term of this Agreement, upon reasonable investigation and to the best of their knowledge, that they (i) are not aware of any Released Claims being considered or brought by any Investor or Person other than the Party Investors, and (ii) will not participate in, or in any way assist with, any proceeding against the Deloitte Entities that is in any way related to the Deloitte Entities' provision of professional services to the DLI Entities, except to the extent that the Receiver or JOLs are compelled by court order or other lawful process to testify or produce documents in such proceeding.

5.3. Representations and Warranties of Deloitte Entities. The Deloitte Entities hereby represent and warrant to Claimants that the statements contained in this Section 5.3 are true and correct.

(a) Authority and Enforceability. The Deloitte Entities have obtained all requisite power and authority to consummate the releases and covenants contemplated hereby.

The execution, delivery, and performance by Deloitte Entities of this Agreement and the consummation of the releases and covenants contemplated hereby have been duly authorized by all requisite action on the part of Deloitte Entities. This Agreement constitutes legal, valid, and binding obligations of the Deloitte Entities, enforceable against the Deloitte Entities in accordance with its terms.

(b) No Conflicts; Consents. The execution, delivery, and performance by the Deloitte Entities of this Agreement, and the consummation of the releases and covenants contemplated hereby, do not and will not: (i) violate or conflict with any organizational documents of the Deloitte Entities; or (ii) violate or conflict with any governmental or court order or law applicable to the Deloitte Entities. No consent, approval, waiver, or authorization is required to be obtained by the Deloitte Entities from any additional person in connection with the execution, delivery, and performance by the Deloitte Entities and the consummation of the releases and covenants contemplated hereby.

SECTION 6. CONFIDENTIALITY

6.1. Confidentiality. Except as necessary to obtain court approval of the Settlement and this Agreement in the SEC Action, to obtain the Sanction Order from the Grand Court, to provide the Notices as required by this Agreement, or to enforce or effectuate the terms of the Settlement and this Agreement, the Parties will keep confidential and shall not publish, communicate, or otherwise disclose, directly or indirectly, in any manner whatsoever, Confidential Information to any Person except that: (a) a Party may disclose Confidential Information pursuant to a legal, professional, or regulatory obligation; court order; or lawfully issued subpoena, but only after providing prompt written notice to the other Parties so that, to the extent practicable, each Party has the time and opportunity, before disclosure of any Confidential Information, to seek and obtain a protective order preventing or limiting disclosure; and (b) a Party may disclose Confidential Information based on specific written consent from each of the other Parties. Notwithstanding anything else in this Agreement or otherwise, such consent may be transmitted by email.

6.2. Media Inquiries. Except as expressly provided in this Section 6, the Parties agree not to discuss or communicate in any fashion regarding the existence or terms of this Agreement with members of the news media, or social media, or in any other form of print or electronic communication likely to be publicly disseminated. The Parties shall not initiate any contact with members of the news media regarding the Released Claims, the Deloitte Entities' involvement in the Related Actions, or this Agreement or its terms, and shall respond to any news media or other inquiry about the status of the Related Actions, the Released Claims, or this Agreement by stating only that the alleged claims have been settled on mutually satisfactory, confidential terms with no admission of liability.

6.3. Mediation Documents. Except as expressly provided in this Agreement and as required by applicable law, all other documents, communications, and information disclosed by or received from a Party as part of the Parties' Mediation process shall remain confidential pursuant to this Section 6 and subject to the terms of the Parties' Non-Use/Non-Waiver and Confidentiality Agreement (as defined below), and shall continue to be protected from disclosure under the

mediation confidentiality statutes, the lawyer-client privilege (including the common-interest doctrine), the work-product doctrine, or under any other applicable privilege or protection from disclosure.

SECTION 7. MISCELLANEOUS

7.1. Entire Agreement. This Agreement is the final, complete, and exclusive agreement of the Parties with respect to the subject matter hereof, and supersedes and merges all prior and contemporaneous discussions, representations, promises, understandings and agreements, whether written or oral, between the Parties with respect to such subject matter. For the avoidance of doubt, nothing in this Agreement is intended to negate or modify the Non-Use/Non-Waiver and Confidentiality Agreement entered into by the Parties in October 2020 as part of the mediation process (the “**Parties’ Non-Use/Non-Waiver and Confidentiality Agreement**”).

7.2. Amendments. This Agreement may be modified or amended only by a written instrument duly executed by each of the Parties.

7.3. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the United States of America and the State of California, in each case, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of any other jurisdiction.

7.4. Costs and Attorneys’ Fees. The Parties shall bear their own costs and attorneys’ fees relating to or arising from any of the Related Actions, the Mediation, and the negotiation of this Agreement.

7.5. Dispute Resolution. This Section 7.5 provides the exclusive method for resolving or adjudicating any disputes, controversies, or claims arising under, out of, or relating to this Agreement including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, or termination (a “**Dispute**”). Any Dispute shall be submitted to the Honorable Daniel Weinstein (Ret.) and Ambassador David Carden (Ret.) for resolution through expedited mediation, and if mediation is unsuccessful, the Parties agree to binding arbitration before a mutually acceptable arbitration panel pursuant to JAMS arbitration rules.

7.6. Non-disparagement. Except for statements made, positions taken, or any testimony given in the Related Actions, each Party agrees not to make, publish or assist others to make or publish any statement that disparages, discredits or defames any other Party in connection with any matter that was or could have been raised in the Related Actions.

7.7. Assignment. No Party may assign, delegate, or otherwise transfer (by operation of law, change of control, or otherwise) any of its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without such consent shall be deemed void. Notwithstanding the foregoing, the Deloitte Entities may assign their rights and obligations under this Agreement without consent to any successor in interest of the Deloitte Entities provided that

in each case, any such assignment shall be effective only if the assignee agrees to be bound by all terms and conditions of, and obligations under, this Agreement.

7.8. Successors and Assigns; No Third-Party Beneficiaries. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and permitted assigns.

7.9. Waiver. No breach of any provision hereof shall be deemed waived unless expressly waived in writing by each of the Parties who may assert such breach. No waiver that may be given by a Party shall be applicable except in the specific instance for which it is given. No waiver of any provision hereof shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver, unless otherwise expressly provided therein. Except where a specific period for action or inaction is provided in this Agreement, neither the failure nor any delay on the part of any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power, or privilege, nor any single or partial exercise of any such right, power, or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The rights and remedies of the Parties with respect to the subject matter hereof are cumulative and not alternative.

7.10. Invalidity of Any Release. In the event that the release of any Releasing Claimant's or Participating DLIF Investor's Released Claims is determined to be invalid or ineffective, the release of all other Releasing Claimants and Participating DLIF Investors shall remain valid. In that circumstance, the Releasing Claimant or Participating DLIF Investor whose release has been determined to be invalid or ineffective shall be required to repay in full his/her/its share of the Settlement Amount received under this Agreement.

7.11. Notice. Any notice, request, instruction, or other document to be given hereunder by any Party to any other Party shall be in writing and shall be delivered personally, by overnight delivery service, or by e-mail, and shall be deemed given: (a) if delivered by hand, when delivered, (b) if delivered by overnight delivery, one (1) business day after deposited with a nationally recognized overnight delivery service, and (c) if sent by e-mail, upon delivery, as follows:

For the Receiver, JOLs, and DLI Entities:

Bradley D. Sharp
333 S. Grand Avenue, Suite 4100
Los Angeles, CA 90071-1544
E-mail: bsharp@dsiconsulting.com

and

Christopher D. Johnson

PO Box 2499 Elizabethan Square, Shedden Road, George Town
Grand Cayman KY1-1104, Cayman Islands
E-mail: CDJ@cjacayman.com

with a copy (which shall not constitute notice) to:

Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
E-mail: csullivan@diamondmccarthy.com

For the Deloitte Entities:

Gavin M. Masuda
Associate General Counsel
Deloitte
555 Mission Street
San Francisco, CA 94105
E-mail: gmasuda@deloitte.com

with a copy (which shall not constitute notice) to:

Peter A. Wald
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
E-mail: peter.wald@lw.com

For the Jackson Group:

Todd Kellerman
V3Limited LLC
150 N. Radnor Chester Road, Suite F-200
Radnor, PA 19087
E-mail: tkellerman@v3-limited.com

with a copy (which shall not constitute notice) to:

Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor

Boston, MA 02210
E-mail: mparis@nbparis.com

For the Century Group:

Sameer Kero
19 N. Aberdeen St. PHN
Chicago, IL 60607
E-mail: skero123@gmail.com

with a copy (which shall not constitute notice) to:

Tyler Meade
THE MEADE FIRM PC
12 Funston Avenue, Suite A
San Francisco, CA 94129
E-mail: tyler@meadefirm.com

Michael Reiser
REISER LAW, P.C.
1475 N. Broadway, Suite 300
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E-mail: michael@reiserlaw.com

Jeffrey C. Schneider
Jason Kellogg
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
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Miami, FL 33131
E-mail: jcs@lklsg.com
E-mail: jk@lklsg.com

For the Eigel Group:

Andrew J. Baer
3180 Harness Creek Road
Annapolis, MD 21403
E-mail: andrewbaer@usa.net

with a copy (which shall not constitute notice) to:

Lawrence Eigel

BRAGAR EAGEL & SQUIRE, P.C.
810 Seventh Avenue, Suite 620
New York, NY 10019
E-mail: eagel@bespc.com

For the Class Plaintiffs:

Marcia Kosstrin Trust
41 Aquila Road
Stamford, CT 06902
E-mail: woodartist1000@gmail.com

and

Professional Home Improvements Inc. Retirement Plan
41 Aquila Road
Stamford, CT 06902
E-mail: woodartist1000@gmail.com

with a copy (which shall not constitute notice) to:

David E. Azar
MILBERG TADLER PHILLIPS GROSSMAN LLP
11766 Wilshire Boulevard, Suite 500
Los Angeles, CA 90025
E-mail: dazar@milberg.com
and

Henry J. Kelston
Ahdoot & Wolfson PC
2600 West Olive Ave., Suite 500
Burbank, CA 91505

7.12. Headings. All headings in this Agreement are included solely for convenient reference, are not intended to be full and accurate descriptions of the contents of this Agreement, shall not be deemed a part of this Agreement, and shall not affect the meaning or interpretation of this Agreement.

7.13. Construction. This Agreement shall be deemed to have been drafted jointly by the Parties and without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing an instrument to be drafted. Every term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against a Party. This Agreement, and the construction of this Agreement, shall be governed by California law.

7.14. Execution. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same agreement. This Agreement may be executed by facsimile or by a PDF image delivered via e-mail copy of this Agreement, including the signature pages, which facsimile or PDF image shall be deemed an original.

[Remainder of Page Intentionally Left Blank]

Dated: *May 18, 2022*

On behalf of the Receiver



Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated: *May 18, 2022*

On behalf of the JOLs (solely in their capacity as joint official liquidators of DLIFF)



Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated: May 18, 2022

On behalf of the Deloitte Entities



Peter A. Wald
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600

Dated:

On behalf of the Jackson Group

Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor
Boston, MA 02210
Telephone: (617) 778-9100

Dated:

On behalf of the Receiver

Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated:

On behalf of the JOLs (solely in their capacity as joint official liquidators of DLIFF)

Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated:

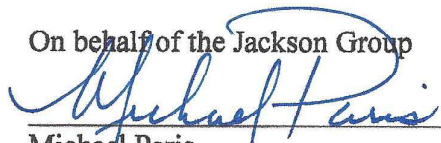
On behalf of the Deloitte Entities

Peter A. Wald
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600

Dated:

5/12/22

On behalf of the Jackson Group

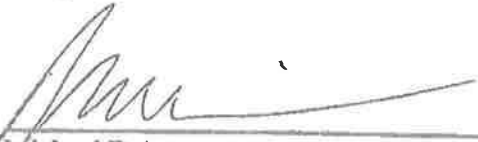

Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor
Boston, MA 02210
Telephone: (617) 778-9100

Dated: 5/12/2022

On behalf of the Century Group



Tyler Meade
THE MEADE FIRM PC
12 Funston Avenue, Suite A
San Francisco, CA 94129
Telephone: (415) 724-9600



Michael Reiser
REISER LAW, P.C.
1475 N. Broadway, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 256-0400



Jeffrey C. Schneider
Jason Kellogg
**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
201 South Biscayne Boulevard, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788

Dated: 5/12/2022

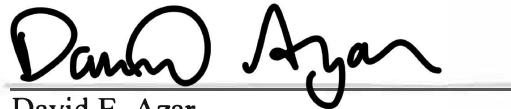
On behalf of the Egel Group



Lawrence P. Egel
BRAGAR EAGEL & SQUIRE, P.C.
810 Seventh Avenue, Suite 620
New York, NY 10019
Telephone: (212) 308-5888

Dated: May 16, 2022

On behalf of Class Plaintiffs



David E. Azar
**MILBERG TADLER PHILLIPS
GROSSMAN LLP**
11766 Wilshire Boulevard, Suite 500
Los Angeles, CA 90025
Telephone: (213) 617-1200

**NEW FIRM NAME AND
ADDRESS:**

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
280 S. Beverly Drive, Suite PH
Beverly Hills, California 90212

EXHIBIT A

EXHIBIT A

Century Group

1. Atkins Investment Partnership
2. Edward Atkins, trustee of the Edward M. Atkins Trust
3. Vernon James Armour, trustee of the Vernon James Armour, Trust dated 04/04/1988 and the Vernon James Armour Trust dated 08/14/2018
4. Ronald Berman, trustee of the Ronald Berman Revocable Trust
5. Elizabeth Blinderman
6. Paul Blinderman, trustee of the Paul Blinderman Revocable Trust
7. Joseph M. Boniecki
8. Patricia Booth, trustee of the Patricia Booth Revocable Trust and the Laurence O. Booth Irrevocable Family Trust of 2012
9. Anne Burke
10. John Burke
11. Christopher John Burke
12. Francis Campise
13. Joseph Campolo, Jr. individually and as trustee of the Joseph P Campolo Jr. Revocable Trust
14. Joseph S. Chasen
15. Mari Christopherson, trustee of the Mari Louisa Christopherson Trust
16. Amy Chuckrow and Jonathan Stulgis, trustees of the Trust Under the Will of Robert Chuckrow Deceased
17. Sherwood Guernsey, trustee of the Carol C. Guernsey Irrevocable Trust
18. Phillip Crump
19. David Decker, Sr. individually and as trustee for the Mary Louise Decker Family GST Trust
20. David Decker, Jr., trustee of the 2017 Decker Family Irrevocable Gift Trust
21. 2012 DPDS Fund L.P.
22. Barbara Drumm
23. Dusty47 LLC
24. Four J Family LLC
25. Jeffrey Goldberg, trustee of the Jeffrey M. Goldberg Trust u/a dtd 08/01/1995
26. Harmony Investments LLC
27. Charles Harrold, III
28. Margaux Marbury Harrold
29. Stephanie Harrold, trustee of the Stephanie A. Harrold Revocable Trust
30. Nancy Lynn Morton, trustee of the Harrold Family Dynasty Trust
31. Charles Cotton Harrold IV, trustee of the C. Cotton Harrold IV Investment Trust
32. JP Morgan Trust Company of Delaware, trustee of the Trust Under the Will of Marion E. Horween FBO Nancy Horween Trust
33. JP Morgan Trust Company of Delaware, trustee of the Trust Under the Will of Marion E. Horween FBO Lisa Horween Kelly
34. Sally Jo Morris, trustee of the Suzanne Kanis Revocable Trust
35. Ronald D. Kaplan

36. Michael R. Kaskie
37. Kilrea Family Investments, LLC
38. Scott Kilrea, trustee of the Scott Kilrea Trust U/A DTD 04/14/1997
39. John Henry Koehler III
40. Sandra Sue Koehler
41. Karl Henry John Koehler III and Inna Koehler, trustees of the Jay Koehler and Inna Koehler Living Trust
42. Kreiseder Family LLC
43. LTR I LLC
44. Sheffee Lulkin
45. Shefee Lulkin & Associates, Inc.
46. John L MacCarthy, trustee of the John Leland MacCarthy Revocable Trust
47. John D. Marschall, trustee of the John D. Marschall Trust
48. Peter J. McDonald, trustee of the Peter J. McDonald Trust DTD 04/22/2010
49. William McKenna
50. Nancy Mengel
51. Robert Mueckler, II
52. Steven Patrick Nedelka
53. Holly Nelson-Johnson and Terry Nelson-Johnson, trustees of the E. Holly Nelson-Johnson Family Irrevocable Trust
54. Mark Ordower, trustee of the Mark Ordower Revocable Trust
55. Ordower Investments
56. James Papesch
57. Peer Pedersen, Jr., trustee of the Declaration of Trust of Peer Pedersen
58. John Muehlstein, trustee of the Peer Pedersen Trust
59. Barry Lance Polonitza
60. Ruthmarie Connor, trustee of the Rollin Polonitza Family Trust
61. Mary Polonitza, trustee of the Jard Polonitza Separate Property Trust
62. Beri Lynn Polonitza, trustee of the Beri Lynn Polonitza Revocable Trust
63. Phillip Porpora, trustee of the Phillip Porpora Trust
64. Liza Reynolds Limited Partnership
65. RJDC Management Company LLC
66. Scott Anthony Ronan
67. Jerry G. Ryder
68. Kimberly Seeds
69. James Sharman
70. Victoria Clewell, trustee of the Ronald J. Sloane Family Trust
71. SSSB Partnership
72. Jonathan Stulgis, trustee of the Jonathan W. Stulgis Family Trust
73. Doris J. Wik
74. Frances Armour Williamson, trustee of the Frances Armour Williamson TTEE Revocable Trust of Frances Armour Williamson
75. Yiming Zhang
76. Stephen Jay Akana
77. Harminder Brar and Pearlene Brar as trustees of the Brar Family Trust
78. Robert Brilliant, trustee of the Brilliant Family Trust

79. Jerome Yap Chua
80. Orla Cunningham, LLC
81. Barry P. Garrison, trustee of the Barry P. Garrison
82. Eugene Goebel
83. Jessa Ann Goebel
84. Stephanie Marie Grein
85. Brent Horowitz and Heather Thompson as trustees of the Horowitz Family Trust
86. Julie Lewis
87. Stacy K. Li
88. Ronald McLeod, trustee of the Ronald McLeod Revocable Trust
89. John D. Michael
90. Daniel Michael and Lillian Leong as trustees of the Michael Leong Family Trust DTD 08/13/2013
91. Jennifer Mvongo, trustee of the Jennifer M. Mvongo Revocable Trust
92. Ramesh Patel and Alison Patel, trustees of the R. Patel and A. Patel TTEE, Kenew DBP U/A DTD 12/31/2016
93. David Malcolm Potts
94. Thomas F. Reiser, Jr.
95. James E. Salter
96. Ridge Sampson, trustee of the Ridge Sampson Revocable Trust
97. Aaron Michael Silva
98. Gerald Guy Stokes, Jr.
99. Max Luis Tejada
100. Trinh-Mai N. Vo
101. Bret M. Walberg
102. Michael Witlin
103. Bennet Woodward
104. Dimitri Katamanin, individually and as trustee of the Four Season's Trust
105. Sameer Kero, trustee of the Flexedge Investment Management Defined Benefit Pension Plan & Trust
106. Sameer Kero
107. Chanda Mehta Kero
108. N. Kero Investments, LTD., LLLP
109. S. Kero Limited Partnership
110. Niloufer Kero
111. Niloufer Kero, trustee of Niloufer Kero Revocable Family Trust
112. Shawkat Kero
113. Sarita Mehta
114. Narendrakumar Mehta
115. Smita Mehta
116. Pareshkumar Desai
117. Etienne Boillot and Stuart E. Lucas, trustees of the GST Trust
118. Anthony V. Dub
119. Michael Driscoll
120. Neal Driscoll
121. Alia Driscoll

122. Dennis J. FitzSimons
123. U.S. Bank N.A and Soyla V. Rausch as trustee for the Carrie G. Cox TUW Tr. B FBO Mary Hancock and the Harriet C. Collis TUA Tr. B FBO Mary Hancock
124. William Wayne Hancock III, trustee of the George B. Hancock Trust
125. John Vance Hancock
126. Nancy A.D. Hancock
127. Michael Harrigan individually and as trustee for the Michael J. Harrigan Trust
128. John H. Heuberger, trustee of the WBK 2012 Trust
129. Loeb Holding Corporation
130. Armando Pauker
131. SAS ARDIS
132. Vasundhara Tolia
133. Osman Uslu
134. Bret M. Walberg
135. Shai Wininger
136. Philip Nadel
137. Blair Ambach
138. Chancellor Capital
139. Sanjay Tolia
140. Vinay Tolia, trustee of the Sanjay Tolia 2014 Annuity Trust
141. Peter T. Lambrakis
142. Warrington Capitla LLC
143. John W. Buttrick
144. Michael D Wik and Christine A. Wik JTWROS

Eagel Group

1. Andrew Baer, individually and as trustee of the Andrew J. Baer Trust
2. Michael Rosenbloom, individually and as trustee with Robyn Rosenbloom of the Michael Rosenbloom Revocable Trust
3. Wing Point Investments LLC
4. Eytan Turjeman
5. Naamith Heiblum
6. Mordehai Heiblum
7. Rachel Heiblum
8. Yehudith (Judy) Heiblum
9. Zohar Heiblum
10. Reuven Heiblum
11. Greg Isaacs
12. Bernard E. Francois, as trustee of the Bernard E. Francois Living Trust
13. Seth Rosenberg
14. Deborah Loughman
15. John Miller
16. Douglas Zinke

Nystrom Beckman & Paris Group

1. Alfred Jackson
2. Michael Jackson
3. Granger Construction Company
4. Wiener Acquisition Company, LLC
5. Millicent Calicchio
6. Valerie Sabet
7. Maxx Venture Fund H, LLC
8. Ogie, LLC
9. The Steven C. Calicchio Foundation
10. Charitable Lead Annuity Trust "A" U/W Of Steven Calicchio
11. Charitable Lead Annuity Trust "B" U/W Of Steven Calicchio
12. Exempt Trust U/W Of Steven Calicchio FBO Axel Calicchio
13. Exempt Trust U/W Of Steven Calicchio FBO Oriana Calicchio
14. AJC Legacy Investments, LLC
15. OCC Legacy Investments, LLC
16. Douglas Deming
17. Douglas Hamilton
18. Felicitas Deb Fund, LP
19. Felicitas SA1, LP
20. A-One Commercial Insurance Risk Retention Group, Inc.

Class Plaintiffs

1. Marcia Kosstrin Trust
2. Professional Home Improvements Inc. Retirement Plan

EXHIBIT B

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

**[PROPOSED]
SCHEDULING ORDER**

This matter is before the Court on the Amended Motion for (i) Approval of Settlement Agreement with the Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement (“**Amended Approval Motion**”) filed by the Receiver. Following a hearing held on June 14, 2021 on a prior motion for approval, the Parties subsequently modified the Settlement and filed a Joint Status Conference Statement, noting for the Court the relevant changes that were made to the Settlement. The terms of the modified Settlement are contained in the Amended Confidential Settlement Agreement and Release submitted as Exhibit 1 to the Declaration of Bradley D. Sharp accompanying the Amended Approval Motion (“**Amended Settlement Agreement**”). The Amended Approval Motion and supplemental documents concern the Amended Settlement Agreement among and between, on the one hand, (a) Bradley D. Sharp, in his capacity as the Court-appointed Receiver (the “**Receiver**”) for the estate of Direct Lending Investments,

1 LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd.,
2 DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in
3 Receivership) (collectively, the “**DLI Receivership Entities**”); (b) Bradley D. Sharp
4 and Christopher D. Johnson, in their capacities as Joint Official Liquidators
5 (“**JOLs**”) of Direct Lending Income Feeder Fund, Ltd. (in official liquidation)
6 (“**DLIFF**”) (DLIFF, together with the DLI Receivership Entities, the “**DLI**
7 **Entities**”); (c) investors in the DLI Entities (“**Investors**”) that participated in the
8 Mediation and are identified in Exhibit A to the Amended Settlement Agreement
9 (“**Party Investors**”) (specifically, those Investors represented by The Meade Firm
10 P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP,
11 those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*,
12 Case No. 20GDCV00419 (Ca. Super. Ct.) and represented by Nystrom Beckman &
13 Paris LLP, those Investors represented by Bragar Eagel & Squire, P.C., and those
14 Investors that are putative lead plaintiffs in the action *Marcia Kosstrin Trust and*
15 *Professional Home Improvements, Inc. Retirement Plan v. Direct Lending*
16 *Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.) and represented by
17 putative class counsel Ahdoot and Wolfson PC and Milberg Coleman Bryson
18 Phillips Grossman PLLC); and, on the other hand, (d) Deloitte & Touche, LLP,
19 Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the
20 “**Deloitte Entities**”). Capitalized terms not otherwise defined in this order shall have
21 the meaning assigned to them in the Amended Settlement Agreement.

22 The Receiver seeks the Court’s approval of the terms of the Amended
23 Settlement Agreement, including entry of a final order approving the Settlement in
24 the present action (the “**Order Approving Settlement**”). After reviewing the terms
25 of the Amended Settlement Agreement and considering the arguments presented in
26 the Amended Approval Motion, the Court preliminarily approves the Amended
27 Settlement Agreement as adequate, fair, and reasonable. Accordingly, the Court
28 enters this Scheduling Order to: (i) provide for notice of the terms of the Amended

1 Settlement Agreement, including the proposed Order Approving Settlement; (ii) set
2 the deadline for filing objections to and opting out of the Amended Settlement
3 Agreement and the Order Approving Settlement; (iii) set the deadline for responding
4 to any objection so filed; and (iv) set the date of the final approval hearing regarding
5 the Amended Settlement Agreement and the Order Approving Settlement (the
6 **“Final Approval Hearing”**), as follows:

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

17 2. Final Approval Hearing: The Final Approval Hearing will be held
18 before the Honorable Dale S. Fischer of the United States District Court for the
19 Central District of California, First Street Courthouse, 350 West 1st Street, Los
20 Angeles, California 90012, in Courtroom 7D, at __:__ .m. on _____, 2022,
21 which is a date at least sixty (60) calendar days after entry of this Scheduling Order.
22 The purposes of the Final Approval Hearing will be to: (i) determine whether the
23 terms of the Amended Settlement Agreement should be finally approved by the
24 Court; (ii) determine whether the Order Approving Settlement attached as Exhibit E
25 to the Amended Settlement Agreement should be entered by the Court; (iii) rule
26 upon any objections to the Amended Settlement Agreement or the Order Approving
27 Settlement; and (v) rule upon such other matters as the Court may deem appropriate.

28

1 3. Notice: The Court approves the form of Notice of Settlement attached
2 as Exhibit C to the Amended Settlement Agreement, the Notices of Settlement and
3 Right of Exclusion from Settlement (the “**Opt-out Notices**”) attached as Exhibits H
4 and I to the Amended Settlement Agreement, and finds that the methodology,
5 distribution, and dissemination of these notices: (i) constitute the best practicable
6 notice; (ii) are reasonably calculated, under the circumstances, to apprise all Persons
7 who may have a Released Claim against the Released Deloitte Entities (specifically
8 the Interested Parties¹), of the Amended Settlement Agreement, and the releases
9 therein; (iii) are reasonably calculated, under the circumstances, to apprise all
10 Interested Parties of the right to object to the Amended Settlement Agreement and
11 the Order Approving Settlement, and the right of Investors to opt out of the
12 Settlement, and to appear at the Final Approval Hearing; (iv) constitute due,
13 adequate, and sufficient notice; (v) meet all requirements of applicable law,
14 including the Federal Rules of Civil Procedure, the United States Constitution
15 (including Due Process), and the Rules of the Court; and (vi) will provide to all
16 Persons a full and fair opportunity to be heard on these matters. The Court further
17 approves the form of the Publication Notice attached as Exhibit D to the Amended
18 Settlement Agreement. Therefore:

19 a. The Receiver is directed, no later than seven (7) calendar days
20 after entry of this Scheduling Order, to cause the Notice of Settlement in
21 substantially the same form attached as Exhibit C to the Amended Settlement
22 Agreement to be sent via electronic mail, first class mail, or international delivery
23 service to all Interested Parties.

24 b. The Receiver is directed, no later than seven (7) calendar days
25 after entry of this Scheduling Order, to cause the appropriate Opt-out Notice(s) in
26

27 ¹ 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 substantially the same form attached as Exhibit H or I to the Amended Settlement
2 Agreement to be sent via electronic mail, first class mail, or international delivery
3 service to all known Investors of DLI Entities.

4 c. The Receiver is directed, no later than seven (7) calendar days
5 after entry of this Scheduling Order, to cause the Publication Notice in substantially
6 the same form attached as Exhibit D to the Amended Settlement Agreement to be
7 published twice in the national edition of *The Wall Street Journal*, twice in the
8 international edition of *The New York Times*, and once in *The Los Angeles Times*.

9 d. The Receiver is directed, no later than seven (7) calendar days
10 after entry of this Scheduling Order, to cause the Amended Settlement Agreement,
11 the Amended Approval Motion and Joint Status Conference Statement, this
12 Scheduling Order, the Notice (Exhibit C to the Amended Settlement Agreement),
13 the Opt-out Notices (Exhibits H and I to the Amended Settlement Agreement) and
14 all exhibits and appendices attached to these documents, to be posted on the
15 Receiver's website (<http://case.stretto.com/dli>).

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

24 f. No less than ten (10) calendar days before the Final Approval
25 Hearing, the Receiver shall cause to be filed with the Clerk of this Court written
26 evidence of compliance with subparts (a) through (d) of this Paragraph, which may
27 be in the form of an affidavit or declaration.

28 4. Objections and Appearances at the Final Approval Hearing: Any

1 Person who wishes to object to the terms of the Amended Settlement Agreement or
2 the Order Approving Settlement, or who wishes to appear at the Final Approval
3 Hearing, must do so by emailing a written objection to TeamDLI@stretto.com, no
4 later than [insert date of 21st day before Final Approval Hearing], 2022. All
5 objections must:

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

8 b. contain the name, address, telephone number, and email address
9 of any attorney representing the Person filing the objection;

10 c. be signed by the Person filing the objection, or his or her
11 attorney;

12 d. state, in detail, the basis for any objection;

13 e. attach any document the Court should consider in ruling on the
14 Amended Settlement Agreement and the Order Approving Settlement; and

15 f. if the Person objecting wishes to appear at the Final Approval
16 Hearing, make a request to do so.

17 The Receiver is directed to compile all objections submitted into a single pleading
18 and file them with the Court.

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

4 5. Responses to Objections: Any Party to the Amended Settlement
5 Agreement may respond to an objection filed pursuant to Paragraph 4 by filing a
6 response in the SEC Action no later than [insert date of 7th day before the Final
7 Approval Hearing]. To the extent any Person emailing an objection cannot be served
8 by action of the Court's CM/ECF system, a response must be served to the email
9 and/or mailing address provided by that Person.

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

17 7. Use of Order: Under no circumstances shall this Scheduling Order be
18 construed, deemed, or used as an admission, concession, or declaration by or against
19 any of the Deloitte Entities of any fault, wrongdoing, breach or liability. Neither this
20 Scheduling Order, nor the proposed Amended Settlement Agreement, or any other
21 settlement document, shall be filed, offered, received in evidence, or otherwise used
22 in these or any other actions or proceedings or in any arbitration, except to give effect
23 to or enforce the Amended Settlement Agreement or the terms of this Scheduling
24 Order.

25 **IT IS SO ORDERED.**

26 Signed on _____, 2022

27
28 DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

EXHIBIT C

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS, LLC,

Defendant.

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

NOTICE OF SETTLEMENT

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that the following parties have reached an agreement (the “**Amended Settlement Agreement**”) among and between, on the one hand, (a) Bradley D. Sharp, in his capacity as the Court-appointed Receiver (the “**Receiver**”) for the estate of Direct Lending Investments, LLC, Direct Lending Income Fund, L.P. (“**DLIF**”), Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership) (collectively, the “**DLI Receivership Entities**”); (b) Bradley D. Sharp and Christopher D. Johnson, 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**”); (c) investors in the DLI Entities (“**Investors**”) that participated in the Mediation (as defined in the Amended Settlement Agreement) and identified in Exhibit A to the Amended Settlement Agreement (“**Party Investors**”) (specifically, those Investors represented by The Meade Firm P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP; those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*, Case No.

1 20GDCV00419 (Ca. Super. Ct.) (the “**Jackson Action**”) and represented by Nystrom Beckman
2 & Paris LLP; those Investors represented by Bragar Eigel & Squire, P.C.; and those Investors that
3 are putative lead plaintiffs in the action *Marcia Kosstrin Trust and Professional Home*
4 *Improvements, Inc. Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-
5 02452 (C.D. Cal.) and represented by putative class counsel Ahdoot and Wolfson PC and Milberg
6 Coleman Bryson Phillips Grossman PLLC); and, on the other hand, (d) Deloitte & Touche, LLP,
7 Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte**
8 **Entities**”).

9 Under the terms of the Amended Settlement Agreement, the Deloitte Entities will pay the
10 amount of thirty-one million U.S. dollars (\$31,000,000) (the “**Settlement Amount**”) to be
11 deposited into escrow account(s) for DLIF Investors; for DLIFF; and for payment of Court
12 approved attorneys’ fees. The Settlement Amount less attorneys’ fees and expenses as awarded
13 by the Court (“**Net Settlement Amount**”), will be disbursed by the Receiver to DLIF Investors
14 and will be distributed by the JOLs pursuant to Cayman Islands law. As described in more detail
15 in the applicable Notice of Settlement and Right of Exclusion from Settlement (“**Opt-out Notice**”),
16 a portion of the Net Settlement Amount will be distributed on a pro rata basis to persons or entities
17 that invested, through the purchase of limited partnership interests or otherwise, in DLIF (“**DLIF**
18 **Investors**”) that do not exclude themselves from the Settlement (“**Participating DLIF**
19 **Investors**”) pursuant to the procedures described therein. A separate portion of the Net Settlement
20 Amount will be distributed by the JOLs in accordance with Cayman Islands law. In return, the
21 Receiver, the JOLs, the DLI Entities, the Party Investors (the “**Claimants**”), and Participating
22 DLIF Investors will release all claims against the Deloitte Entities arising out of, relating to, or in
23 connection with the professional services provided by the Deloitte Entities to the DLI Entities
24 among other Released Claims.¹ The Claimants, Participating DLIF Investors, and DLIFF

25
26 ¹ “Released Claims” means, to the fullest extent that the law permits their release, all past, present,
27 and future claims of any nature whatsoever, including, without limitation, all claims, suits, actions,
28 allegations, damages (including, without limitation, contributory, compensatory, punitive,
exemplary, rescissory, direct, consequential or special damages, restitution, and disgorgement),
liabilities, causes of action, complaints, lawsuits, responsibilities, demands, rights, debts, penalties,
costs, expenses, fees, injunctive relief, attorneys’ fees, expert or consulting fees, prejudgment

1 Investors that do not exclude themselves from the Settlement pursuant to the procedures in the
2 applicable Opt-out Notice (“**Participating DLIFF Investors**”)² will be barred by the Order
3 Approving Settlement (defined below) from prosecuting or seeking monetary or any relief in the
4 United States against any of the Released Deloitte Entities³ with respect to any and all such claims.
5 Any final verdict or judgment obtained by or on behalf of any Claimant or Participating DLIF
6 Investor against any Third Party⁴ shall be reduced by the proportionate fault of the Released
7 Deloitte Entities, unless governing law requires otherwise. Concurrent with this Notice, Investors
8 are being served with an Opt-out Notice describing the steps that Investors must take to exclude
9 themselves from the Settlement.

10 PLEASE TAKE FURTHER NOTICE that the Receiver has filed in *Securities and*
11 *Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (C.D. Cal.) (the

12 _____
13 interest, indemnities, duties, losses, and obligations of any kind, known or unknown, foreseen or
14 unforeseen, whether or not concealed or hidden, asserted or unasserted, existing or contingent,
15 direct or indirect, anticipated or unanticipated, asserted or that could have been asserted by, or on
16 behalf of, for the benefit of, or in the name of the Claimants or Participating Investors, whether
17 legal, contractual, rescissory, statutory, or equitable in nature, whether arising under federal, state,
18 common or foreign law, that now exist, have ever existed, or might ever exist, from the beginning
19 of time in perpetuity, that are based upon, arise out of, or are related in any way to: (a) the
20 professional services provided by the Deloitte Entities to the DLI Entities; (b) the conduct,
21 transactions, or occurrences set forth in any of the pleadings in the Related Actions; (c) the Related
22 Actions; and (d) the conduct and subject matter of the Mediation, Settlement negotiations, and the
23 negotiation of this Agreement (except for representations or obligations expressly included in this
24 Agreement), including without limitation fraud in the inducement thereof.

19 ² Participating DLIF Investors and Participating DLIFF Investors together are referred to as
20 “Participating Investors”.

20 ³ “Released Deloitte Entities” means (a) the Deloitte Entities; (b) the Deloitte Entities’
21 predecessors, successors, Affiliates, Subsidiaries, divisions, assignors, and assignees; (c) each of
22 the foregoing’s past, present, and future officers, directors, board and board members, principals,
23 partners, officials, employees, Subsidiaries, parents, Affiliates, divisions, joint venturers,
24 contractors, subcontractors, subrogees, offices, controlled Persons, predecessors, successors,
25 assignors, assigns, transferees, heirs, executors, shareholders, owners, investors, accountants,
26 auditors, advisors, trustees, fiduciaries, consultants, agents, representatives, nominees, attorneys,
27 partners, associates, senior counsel, managers, and members, in each case individually and
28 collectively, together with any of their respective predecessors and successors in interest; and (d)
each of the Deloitte Entities’ insurers, reinsurers, excess insurers, underwriters, and claims
administrators. For avoidance of doubt, “Released Deloitte Entities” include, without limitation,
Deloitte & Touche, LLP, Deloitte Tax LLP, Deloitte & Touche LLP (Cayman Islands), Deloitte
LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Transactions
and Business Analytics LLP, Deloitte Services LP, and Deloitte USA LLP.

28 ⁴ “Third Party” means any nonparty to the Amended Settlement Agreement that has been or may
be sued by any of the Claimants or Participating Investors for claims relating to, or in connection
with, the DLI Entities.

1 **“SEC Action”**) the Amended Motion for (i) Approval of Settlement Agreement with the Deloitte
2 Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement (**“Amended**
3 **Approval Motion”**). Following a hearing held on June 14, 2021 on a prior motion for approval,
4 the Parties subsequently modified the Settlement. The Receiver and the Deloitte Entities also filed
5 a Joint Status Conference Statement noting for the Court the changes to the Settlement in the
6 Amended Settlement Agreement. The Settlement is expressly conditioned on the Court approving
7 the Amended Settlement Agreement and entering an order in the form of Exhibit E attached to the
8 Amended Settlement Agreement (**“Order Approving Settlement”**). While the Settlement also
9 requires that the Grand Court of the Cayman Islands supervising the DLIFF liquidation make an
10 order stating that the JOLs have sanction to enter into the Settlement and the Amended Settlement
11 Agreement, this order has already been granted.

12 **This matter may affect your rights and you may wish to consult an attorney.**

13 The material terms of the Amended Settlement Agreement are as follows:

- 14 a) The Deloitte Entities will pay \$31,000,000 into escrow accounts to be identified by
15 the Receiver pursuant to the Amended Settlement Agreement;
- 16 b) Investors shall have the right to exclude themselves from participation in the
17 Settlement pursuant to the procedures described in the applicable Opt-out Notice.
18 In the event that Investors that opt-out of the Settlement exceed a certain threshold
19 agreed upon by the signatories to the Amended Settlement Agreement (**“Opt-out**
20 **Threshold”**), the Deloitte Entities shall have the sole and exclusive right to
21 withdraw from and terminate the Settlement;
- 22 c) Counsel for Claimants and the Deloitte Entities are executing a confidential
23 Supplemental Agreement Regarding Requests for Exclusion. This supplemental
24 agreement sets forth certain conditions under which the Deloitte Entities shall have
25 the option to withdraw from the Settlement and render the Settlement Agreement
26 null and void in the event that the Opt-out Threshold is reached;
- 27 d) Entry of an Order Approving Settlement: specifying (i) that each of the Claimants
28 and Participating DLIF Investors release each of the Released Deloitte Entities from

1 all Released Claims; (ii) that each of the Claimants and Participating Investors are
2 barred from seeking monetary or other relief in any state or federal court, arbitration
3 proceeding, or other forum in the United States against any of the Released Deloitte
4 Entities with respect to any and all claims based on the professional services
5 provided by the Deloitte Entities to the DLI Entities; (iii) any final verdict or
6 judgment obtained by or on behalf of any Claimant or Participating DLIF Investor
7 against any Third Party shall be reduced by an amount that corresponds to the
8 percentage of responsibility of the Released Deloitte Entities for common damages.
9 However, where the law governing such final verdict or judgment (“**Other**
10 **Governing Law**”) requires a reduction in a different amount, the final verdict or
11 judgment shall be reduced by an amount as provided by Other Governing Law.

12 e) An Agreement Regarding Disbursement of Attorneys’ Fees, attached as Exhibit F
13 to the Amended Settlement Agreement, establishes an Attorneys’ Fund in the
14 amount of \$4,650,000 to compensate the attorneys who represented the Party
15 Investors, subject to Court approval of the Attorneys’ Fee Motion [ECF No. ____].
16 The Receiver, JOLs, and the Deloitte Entities do not object to the Attorneys’ Fee
17 Motion;

18 f) The Receiver will disseminate notice of the Amended Settlement Agreement as set
19 forth in the Scheduling Order entered in the SEC Action (ECF No. [____]), including
20 via this Notice to all Interested Parties⁵ and the applicable Opt-out Notice to all
21 Investors (through one or more of the following: first class mail, email, or
22 international delivery) and provide publication notice.

23 Copies of the Amended Settlement Agreement, the Amended Approval Motion, the Joint Status
24 Conference Statement, and other supporting papers may be obtained from the Court’s docket in
25 the SEC Action [ECF No. _____] and are also available on the website of the Receiver
26 _____

27 ⁵ 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 (http://case.stretto.com/dli). Copies of these documents may also be requested by email, by
2 sending the request to TeamDLI@stretto.com; or by telephone, by calling the Stretto
3 Administrator at 855-885-1564. Unless otherwise specified, all capitalized terms not defined
4 herein are defined in the Amended Settlement Agreement.

5 PLEASE TAKE FURTHER NOTICE that the final hearing on the Amended Approval
6 Motion is set for [_____], 2022 (the “**Final Approval Hearing**”). Any Person who wishes
7 to object to the terms of the Amended Settlement Agreement, or the Order Approving Settlement,
8 or who wishes to appear at the Final Approval Hearing, must do so by emailing a written objection
9 to TeamDLI@stretto.com no later than [insert date of 21st day before Final Approval Hearing],
10 2022. All objections must:

- 11 a. contain the name, address, telephone number, and (if applicable) an email
12 address of the Person filing the objection;
- 13 b. contain the name, address, telephone number, and email address of any
14 attorney representing the Person filing the objection;
- 15 c. be signed by the Person filing the objection, or his or her attorney;
- 16 d. state, in detail, the basis for any objection;
- 17 e. attach any document the Court should consider in ruling on the Amended
18 Settlement Agreement and the Order Approving Settlement; and
- 19 f. if the Person filing the objection wishes to appear at the Final Approval
20 Hearing, make a request to do so.

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

1 from appearing at the Final Approval Hearing. The Court will exercise discretion as to whether it
2 wishes to hear from any person or entity who fails to make a timely written objection and request
3 to appear.

4

5 Dated:

DIAMOND MCCARTHY LLP

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By: /s/ Christopher D. Sullivan
Christopher D. Sullivan, counsel
For Bradley D. Sharp,
Permanent Receiver

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EXHIBIT D

Publication Notice

To be published twice in the following newspapers: national edition of *The Wall Street Journal* and the international edition of *The New York Times*; and once in *The Los Angeles Times*:

PLEASE TAKE NOTICE that the Court-appointed Receiver for the estate of Direct Lending Investments, LLC, Direct Lending Income Fund, L.P., (“**DLIF**”), Direct Lending Income Feeder Fund, Ltd., (“**DLIFF**”), DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership) (collectively “**DLI Receivership Entities**”), the Joint Official Liquidators of Direct Lending Income Feeder Fund, Ltd. (in official liquidation) (together with DLI Receivership Entities “**DLI Entities**”), and the Party Investors of the DLI Entities (collectively “**Claimants**”) have reached an agreement to settle all claims asserted or that could have been asserted against Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte Entities**”) by Claimants or any DLIF Investor that does not exclude itself from the Settlement (“**Participating DLIF Investors**”), that are based upon, related to, or in connection with the professional services provided by the Deloitte Entities to the DLI Entities, among other Released Claims (the “**Amended Settlement Agreement**”). All capitalized terms not defined in this notice are defined in the Amended Settlement Agreement.

Pursuant to the Amended Settlement Agreement, the Deloitte Entities will pay the amount of \$31,000,000 (“**Settlement Amount**”) to be deposited into escrow account(s) for DLIF Investors; for DLIFF; and for the payment of Court approved attorneys’ fees. Counsel for Party Investors seek to be paid attorney’s fees of up to \$4.65 million that will be deducted from the Settlement Amount (“**Net Settlement Amount**”). As part of the Amended Settlement Agreement, the Receiver has requested entry of a final order approving the Settlement from the United States District Court, Central District of California, *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (“**SEC Action**”).

Investors have the right to exclude themselves from the Amended Settlement Agreement pursuant to the procedures described in the notice to be sent to Investors (“**Opt-out Notices**”). The deadline to opt-out is [_____]. If the Court in the SEC Action approves the Settlement, Claimants and Participating DLIF Investors will be eligible to receive their portion of the Net Settlement Amount as determined by the distribution method approved by the Court in the SEC Action. A separate portion of the Net Settlement Amount will be distributed by the JOLs of DLIFF in accordance with Cayman Islands law. Claimants and Participating DLIF Investors will release any claim or cause of action of every nature and description against the Released Deloitte Entities, whether arising under

federal, state, statutory, regulatory, common, foreign, or other law, based upon, arising out of, or related in any way to (a) professional services provided to the DLI Entities, (b) the conduct, transactions, or occurrences set forth in any of the pleadings in the Related Actions, (c) the Related Actions, (d) the conduct and subject matter of the Mediation between the Parties, the Settlement negotiations, and the negotiation of the Amended Settlement Agreement. Claimants and Participating Investors will be barred from pursuing a lawsuit or seeking monetary or other relief against the Deloitte Entities in the United States related in any way to the professional services provided by the Deloitte Entities to the DLI Entities. Additionally, Claimants and DLIF Participating Investors agree, and by order of the Court in the SEC Action will be required to, reduce the amount of any final verdict or judgment they obtain against any Third Party by an amount that corresponds to the percentage of responsibility of the Released Deloitte Entities for common damages. However, where the law governing such final verdict or judgment (“**Other Governing Law**”) requires a reduction in a different amount, the final verdict or judgment shall be reduced by an amount as provided by Other Governing Law. If a DLIF Investor excludes itself, that Investor will not be entitled to receive any portion of the Settlement Amount, but keeps any right to sue or continue to sue the Deloitte Entities on claims related in any way to the professional services provided by the Deloitte Entities to the DLI Entities. If a DLIF Investor excludes itself, that Investor will retain any claims it may have against the Deloitte Entities and any rights it has to share in the distribution proceeds as determined under Cayman Islands law. Specific information regarding these rights and options, and how to exercise them, is provided in the applicable Opt-out Notices.

The Court in the SEC Action will hold a hearing to consider whether to approve the Amended Settlement Agreement and enter the Order Approving Settlement at _____.m, on _____, 2022, in Courtroom 7D of the United States District Court for the Central District of California, First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012. The Court will consider whether the Settlement is adequate, fair, and reasonable. If you wish to object to the Amended Settlement Agreement or appear at the hearing, you must email a written objection to TeamDLI@stretto.com on or before [insert date of 21st day before Final Approval Hearing]. Specific information on objecting is provided in the Opt -out Notices and the Amended Notice of Proposed Settlement (collectively “**Notices**”).

Complete copies of the Amended Settlement Agreement, the proposed Order Approving Settlement, and other settlement documents are available on the Receiver’s website: <http://case.stretto.com/dli> or by emailing: TeamDLI@stretto.com or by calling: 855-885-1564.

EXHIBIT E

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

Hon. Dale S. Fischer

**[PROPOSED] ORDER
APPROVING SETTLEMENT**

1 This matter is before the Court on the Amended Motion for (i) Approval of
2 Settlement Agreement with the Deloitte Entities; (ii) Entry of Scheduling Order; and
3 (ii) Entry of Order Approving Settlement (**“Amended Approval Motion”**).
4 Following a hearing held on June 14, 2021 on a prior motion for approval, the Parties
5 subsequently modified the Settlement and have filed a Joint Status Conference
6 Statement, noting for the Court the relevant changes that were made to the
7 Settlement. The terms of the modified Settlement are contained in the Amended
8 Confidential Settlement Agreement and Release attached as Exhibit 1 to the
9 Declaration of Bradley D. Sharp accompanying the Amended Approval Motion (the
10 **“Amended Settlement Agreement”**). The Amended Approval Motion and
11 supplemental documents concerning the Amended Settlement Agreement among
12 and 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 (as defined in the Amended Settlement Agreement) and identified in
22 Exhibit A to the Amended Settlement Agreement (**“Party Investors”**) (specifically,
23 those Investors represented by The Meade Firm P.C., Reiser Law P.C., and Levine
24 Kellogg Lehman Schneider + Grossman LLP (the **“Century Group”**), those
25 Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*, Case
26 No. 20GDCV00419 (Ca. Super. Ct.) (the **“Jackson Action”**) and represented by
27 Nystrom Beckman & Paris LLP (the **“Jackson Group”**), those Investors represented
28

1 by Bragar Eigel & Squire, P.C. (the “**Eigel Group**”), and those Investors that are
2 putative lead plaintiffs in the action *Marcia Kosstrin Trust and Professional Home*
3 *Improvements, Inc. Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case
4 No. 2:19-cv-02452 (C.D. Cal.) and represented by putative class counsel Ahdoot and
5 Wolfson PC and Milberg Coleman Bryson Phillips Grossman PLLC) (the “**Class**
6 **Plaintiffs**”); and, on the other hand, (d) Deloitte & Touche, LLP, Deloitte Tax LLP,
7 and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte**
8 **Entities**”). Capitalized terms not otherwise defined in this order shall have the
9 meaning assigned to them in the Amended Settlement Agreement.

10 Following notice and a hearing, and having considered the Amended
11 Approval Motion, the Joint Status Conference Statement, and other filings including
12 any objections, and having heard the arguments of counsel, the Court GRANTS the
13 Amended Approval Motion.

14 **I. INTRODUCTION**

15 The events preceding the Amended Approval Motion, including this Court’s
16 appointment of the Receiver and the settling parties’ settlement negotiation efforts
17 are documented in the settling parties’ submissions to the Court. *See* Dkts. 532, 608-
18 10, 612-13.

19 By agreement effective August 3, 2020, the Receiver, JOLs, and the Deloitte
20 Entities determined to engage in a mediation process to explore a mutually agreeable
21 resolution of the Receiver and JOLs’ potential claims against the Deloitte Entities
22 related to the Deloitte Entities’ provision of professional services to the DLI Entities.
23 At various times following August 3, 2020, the Party Investors joined the mediation
24 process, agreeing to stay any actions that had already been filed against the Deloitte
25 Entities and/or forbear from filing any such actions.

26 Under the terms of the Amended Settlement Agreement, the Deloitte Entities
27 will fund the Settlement Fund in the amount of thirty-one million U.S. dollars
28

1 (\$31,000,000) to be deposited into escrow accounts to be identified by the Receiver.
2 In return: (a) Claimants and persons or entities that invested, through the purchase
3 of limited partnership interests or otherwise, in DLIF that do not exclude themselves
4 from the Settlement (“**Participating DLIF Investors**”) will release all Released
5 Claims against the Deloitte Entities; (b) Claimants, Participating DLIF Investors,
6 and persons or entities that invested through DLIFF that do not exclude themselves
7 from the Settlement (“**Participating DLIFF Investors**”)¹ will be barred by order of
8 this Court from seeking monetary relief or other relief in any court, arbitration
9 proceeding, or other forum in the United States against the Released Deloitte Entities
10 with respect to claims based on the professional services provided by the Deloitte
11 Entities to the DLI Entities; and (c) Claimants and Participating DLIF Investors will
12 agree to reduce any final verdict or judgment they may obtain against any Third
13 Party² by the proportionate fault of the Released Deloitte Entities, unless governing
14 law requires otherwise. The Amended Settlement Agreement is conditioned on the
15 Court’s approval of the Settlement and entry of this Order Approving Settlement.
16 Investors who exclude themselves from the Settlement pursuant to the procedures
17 described in the applicable Notice of Settlement and Right of Exclusion from
18 Settlement (“**Opt-Out Notices**”) are not bound by the Settlement or this Order
19 Approving Settlement.

20 The Court entered a Scheduling Order on _____ , 2022 [ECF No.
21 ____], which, *inter alia*, preliminarily approved the Amended Settlement Agreement,
22 approved the form and content of the Notice of Settlement, the Publication Notice,
23 and the Opt-Out Notices and method and manner of service and publication,
24 established opt-out procedures by which Investors could exclude themselves from
25 _____

26 ¹ Participating DLIF Investors and Participating DLIFF Investors are referred to
27 together as “**Participating Investors**.”

28 ² Third Party means any non-party to the Amended Settlement Agreement that has
been or may be sued by any of the Claimants or Participating Investors for claims
arising out of, relating to, or in connection with the DLI Entities.

1 participation in the Settlement, and set the date for a Final Approval Hearing. The
2 Receiver filed a declaration with the Court detailing compliance with the notices and
3 publication requirements contained in the Scheduling Order [ECF No. ____].

4 On _____, 2022, the Court held the scheduled Final Approval Hearing.
5 For the reasons set forth herein, the Court finds that the terms of the Amended
6 Settlement Agreement are adequate, fair, and reasonable, and that the Amended
7 Settlement Agreement is **APPROVED**. The Court further finds that entry of this
8 final Order Approving Settlement is appropriate.

9 **II. ORDER**

10 It is **ORDERED, ADJUDGED, AND DECREED** as follows:

11 1. The Amended Approval Motion is **GRANTED** in its entirety. Any
12 objections are overruled to the extent not otherwise withdrawn or resolved.

13 2. Terms used in this Order Approving Settlement are defined in the
14 Amended Settlement Agreement, unless expressly otherwise defined herein.

15 3. The Court “has broad powers and wide discretion to determine the
16 appropriate relief in [this] equity receivership[.]” including the authority to approve
17 settlements and enter injunctive relief, bar orders and other equitable remedies. *See*
18 *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *see also In*
19 *re Consol. Pinnacle W. Securities Litig./ADR Tr. Corp.-Merabank Litig.*, 51 F.3d
20 194, 197 (9th Cir. 1995). Moreover, the Court has jurisdiction over the subject
21 matter of this action, and the Receiver is the proper party to seek entry of this Order
22 Approving Settlement.

23 4. The Court finds that the methodology, form, content and dissemination
24 of the Notice of Settlement and Opt-Out Notices: (i) were implemented in
25 accordance with the requirements of the Scheduling Order; (ii) constituted the best
26 practicable notice; (iii) were reasonably calculated, under the circumstances, to
27 apprise all Persons who may have a Released Claim against the Released Deloitte
28

1 Entities (specifically the Interested Parties³), of the Amended Settlement Agreement,
2 the releases therein, and the injunctions provided for in this Order Approving
3 Settlement; (iv) were reasonably calculated, under the circumstances, to apprise all
4 Persons who may have a Released Claim against the Released Deloitte Entities
5 (specifically the Interested Parties), of the right to object to the Amended Settlement
6 Agreement and this Order Approving Settlement, the right for Investors to exclude
7 themselves from the Settlement, and to appear at the Final Approval Hearing;
8 (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all
9 applicable requirements of law, including, without limitation, the Federal Rules of
10 Civil Procedure, the United States Constitution (including Due Process), and the
11 Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be
12 heard on these matters.

13 5. The Court finds that the Amended Settlement Agreement was reached
14 following an extensive investigation of the facts and resulted from vigorous, good
15 faith, arm's-length, mediated negotiations involving experienced and competent
16 counsel. The Parties have represented that material components of the Amended
17 Settlement Agreement include: a) the release of all claims that have been, could have
18 been, or could be asserted against any of the Released Deloitte Entities by Claimants
19 and Participating DLIF Investors arising out of or related to the events leading to
20 these proceedings, including those arising from or related to the Deloitte Entities
21 provision of professional services to the DLI Entities, b) the bar order set forth in
22 paragraph 9 below; and c) the reduction in any final verdict or judgment obtained by
23 Claimants or Participating DLIF Investors against any Third Party by the
24 proportionate fault of the Released Deloitte Entities for common damages, unless
25 governing law requires otherwise. This Order is therefore necessary and appropriate
26

27 ³ Interested Parties means, collectively, all parties to the SEC Action, all known
28 creditors and 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 in order to obtain relief for victims of the fraud pursuant to the Amended Settlement
2 Agreement. The foregoing excludes potential claims by the SEC, the Department
3 of Justice, or other regulatory agencies and in no way forecloses any governmental
4 authority from pursuing investigations or actions related to the operation of the DLI
5 Entities.

6 6. Accordingly, the Court finds that the Amended Settlement Agreement
7 is, in all respects, fair, reasonable, and adequate in the best interests of all Persons
8 claiming an interest in, having authority over, or asserting a claim against any of the
9 Released Deloitte Entities, including but not limited to the Claimants and all
10 Investors of the DLI Entities. The Amended Settlement Agreement is fully and
11 finally approved. The Parties are directed to implement and consummate the
12 Amended Settlement Agreement in accordance with the terms and provisions of the
13 Amended Settlement Agreement and this Order Approving Settlement.

14 7. Pursuant to the Amended Settlement Agreement, as of the Effective
15 Date, each of the Releasing Claimants and Participating DLIF Investors fully,
16 finally, and forever releases, covenants not to sue, and discharges each of the
17 Released Deloitte Entities from any and all Released Claims (as defined in the
18 Amended Settlement Agreement) held by, on behalf of, for the benefit of, or in the
19 name of the Releasing Claimant or Participating DLIF Investor, and shall forever be
20 barred and enjoined from commencing, instituting, prosecuting, maintaining, or
21 seeking monetary or other relief respecting any and all of the Released Claims
22 against any and all of the Released Deloitte Entities. Further, pursuant to the
23 Amended Settlement Agreement, as of the Effective Date, each of the Deloitte
24 Entities, fully, finally, and forever releases, covenants not to sue, and discharges any
25 and all Released Claims against each and every one of the Releasing Claimants and
26 Participating Investors, and shall forever be barred and enjoined from commencing,
27 instituting, prosecuting, maintaining or seeking monetary or other relief respecting
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1 any and all of the Released Claims against any and all of the Releasing Claimants,
2 Participating Investors, or their respective Counsel.

3 8. Pursuant to the Amended Settlement Agreement, any final verdict or
4 judgment obtained by or on behalf of any Claimant or Participating DLIF Investor
5 against any Third Party shall be reduced by an amount that corresponds to the
6 percentage of responsibility of the Released Deloitte Entities for common damages.
7 However, where the law governing such final verdict or judgment (“**Other**
8 **Governing Law**”) requires a reduction in a different amount, the final verdict or
9 judgment shall be reduced by an amount as provided by Other Governing Law.

10 9. The Court permanently bars, restrains and enjoins each of the Releasing
11 Claimants and Participating Investors, whether acting in concert with the foregoing
12 or claiming by, through, or under the foregoing, or otherwise, all and individually,
13 from directly, indirectly, or through a third party, prosecuting, against any of the
14 Deloitte Entities, now or at any time in the future, any action, lawsuit, cause of
15 action, claim, investigation, demand, complaint, or proceeding of any nature in any
16 state or federal court, arbitration proceeding, or other forum in the United States,
17 whether individually, derivatively, on behalf of a class, as a member of a class, or in
18 any other capacity whatsoever, that in any way relates to, is based upon, arises from,
19 or is connected with the professional services provided by the Deloitte Entities to
20 the DLI Entities. The foregoing excludes potential claims by the SEC or other
21 regulatory agencies. Nothing in the foregoing shall preclude any Releasing Claimant
22 or Participating Investor from cooperating with governmental authorities in a lawful
23 manner or responding to a valid subpoena.

24 10. Notwithstanding anything to the contrary in this Order Approving
25 Settlement, the foregoing releases do not release the Parties’ rights and obligations
26 under the Amended Settlement Agreement or bar the Parties from seeking to enforce
27 or effectuate the terms of the Amended Settlement Agreement.
28

1 11. The Released Deloitte Entities have no responsibility, obligation, or
2 liability whatsoever with respect to the cost associated with or the content of the
3 Notice; the notice process; the Distribution Plan; the implementation of the
4 Distribution Plan; the administration of the Amended Settlement Agreement; the
5 management, investment, disbursement, allocation, or other administration or
6 oversight of the Settlement Amount, any other funds paid or received in connection
7 with the Amended Settlement Agreement, or any portion thereof; the payment or
8 withholding of taxes; the determination, administration, calculation, review, or
9 challenge of claims to the Settlement Amount, any portion of the Settlement
10 Amount, or any other funds paid or received in connection with the Amended
11 Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments,
12 expert payments, or other costs incurred in connection with any of the foregoing
13 matters. No appeal, challenge, decision, or other matter concerning any subject set
14 forth in this paragraph shall operate to terminate, cancel or modify the Amended
15 Settlement Agreement or this Order Approving Settlement.

16 12. Nothing in this Order Approving Settlement or the Amended
17 Settlement Agreement and no aspect of the Amended Settlement Agreement or
18 negotiation thereof is or shall be construed to be an admission or concession of any
19 violation of any statute or law, of any fault, liability or wrongdoing, or of any
20 infirmity in the claims or defenses of the Parties with regard to any of the complaints,
21 claims, allegations or defenses in any proceeding. The Deloitte Entities have always
22 denied and continue to expressly deny any liability or wrongdoing with respect to
23 any claims related to their provision of professional services to the DLI Entities.

24 13. The Deloitte Entities are ordered to deliver or cause to be delivered the
25 Settlement Amount (\$31,000,000) as described in the Amended Settlement
26 Agreement. The Parties are ordered to act in conformity with all other provisions of
27 the Amended Settlement Agreement.
28

1 14. The terms of the Settlement and of this Order shall be forever binding
2 on the Deloitte Entities, Claimants, and all Participating Investors, as well as their
3 respective successors and assigns. The persons or entities listed on Exhibit [●]
4 hereto have excluded themselves from the Settlement pursuant to the procedures
5 described in the Opt-Out Notice and are not bound by the terms of the Settlement or
6 this Order.

7 15. Without in any way affecting the finality of this Order Approving
8 Settlement, the Court retains continuing jurisdiction over the Parties for purposes of,
9 among other things, the administration, interpretation, consummation, and
10 enforcement of this Order Approving Settlement including, without limitation, the
11 injunctions and releases herein, and to enter orders concerning implementation of its
12 distribution of the Settlement Amount.

13 20. The Court expressly finds and determines, pursuant to Federal Rule of
14 Civil Procedure 54(b), that there is no just reason for any delay in the entry of this
15 Judgment Approving Settlement, which is both final and appealable, and immediate
16 entry by the Clerk of the Court is expressly directed.

17 21. The Receiver shall cause this Order Approving Settlement to be served
18 via email, first class mail, or international delivery service, on all Interested Parties
19 and any Person that filed an objection to approval of the Amended Settlement
20 Agreement or this Order Approving Settlement.

21
22 **IT IS SO ORDERED**

23
24 Signed on _____, 2022

25
26 _____
27 DALE S. FISCHER
28 UNITED STATES DISTRICT JUDGE

EXHIBIT F

AMENDED AGREEMENT REGARDING DISBURSEMENT OF ATTORNEYS' FEES

This AGREEMENT REGARDING DISBURSEMENT OF ATTORNEYS' FEES ("**Agreement**") is by and between:

- 1) Bradley D. Sharp, as the permanent receiver (the "**Receiver**") for the estate of Direct Lending Investments, LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership) (collectively, the "**DLI Receivership Entities**");
- 2) Bradley D. Sharp and 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**"); and
- 3) Investors in the DLI Entities that participated in the Mediation (defined below) as are referenced in the Amended Confidential Settlement Agreement and Release entered into contemporaneously herewith ("**Party Investors**").

The Receiver, JOLs, the DLI Entities, and the Party Investors are individually referred to herein as a "**Party**" and, collectively, as the "**Parties**."

RECITALS

WHEREAS, on March 22, 2019, the United States Securities Exchange Commission filed a lawsuit in the United States District Court, Central District of California against Direct Lending Investments, LLC, titled *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (the "**SEC Action**"), alleging violations of federal securities laws, including section 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder;

WHEREAS, on April 1, 2019, the court in the SEC Action appointed the Receiver to serve as the permanent receiver of the estate of the DLI Entities;

WHEREAS, on July 25, 2019, the DLIFF official liquidation was initiated by order of the Grand Court of the Cayman Islands in Court FSD Cause No. 108 of 2019 (NSJ) (the "**Cayman Liquidation**");

WHEREAS, on August 1, 2019, the Grand Court of the Cayman Islands filed a supervision order in the Cayman Liquidation (the "**Supervision Order**") that enabled the JOLs, *inter alia*, to compromise certain claims;

WHEREAS, in relevant part, the Supervision Order sanctioned the JOLs "on a joint and several basis" to exercise the powers to, *inter alia*, "bring or defend any action or other legal proceeding in the name and on behalf of [DLIFF]" (Supervision Order § 6(a));

WHEREAS, by agreement effective August 3, 2020, the Receiver, JOLs, and Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche Cayman Islands (collectively, the "**Deloitte Entities**") determined to engage in a mediation process, under the direction and

supervision of the Honorable Daniel Weinstein (Ret.) and Ambassador David Carden (Ret.) (the “**Mediators**”), to explore a mutually agreeable resolution of the Receiver’s and JOLs’ potential claims against the Deloitte Entities;

WHEREAS, at various times following August 3, 2020, the Party Investors joined the mediation process, agreeing to stay any actions that had already been filed against the Deloitte Entities or to forebear from filing any such actions;

WHEREAS, on August 25, 2020, the court in the SEC Action entered an order approving the Receiver to enter into a conflict management protocol that, *inter alia*, granted Christopher D. Johnson the sole and exclusive right and power to act on behalf of DLIFF in the event of a conflict under certain terms and conditions with respect to Recusal Issues (SEC Action, Dkt. No. 289-2 at 17; *see also* Dkt. No. 293) and in other respects Christopher D. Johnson and Bradley D. Sharp, in their capacity as JOLs, are otherwise authorized to act on behalf of DLIFF subject to court supervision;

WHEREAS, the Deloitte Entities, the Receiver/JOLs on behalf of the DLI Entities, and certain Party Investors engaged in a robust exchange of documents and information enabling the Parties to investigate their potential claims and defenses;

WHEREAS, on October 26, 2020, the Receiver, JOLs, and the Party Investors made a presentation to the Mediators and Deloitte Entities concerning the factual and legal bases for certain claims arising from the professional services provided by the Deloitte Entities to the DLI Entities;

WHEREAS, on December 14, 2020, the Deloitte Entities made a rebuttal presentation to the Mediators, Receiver, JOLs, and Party Investors concerning the factual and legal defenses to those claims discussed in the October 26, 2020 presentations;

WHEREAS, on December 21 and 22, 2020, the Parties engaged in mediation with the Mediators (the “**Mediation**”), and the Parties have agreed on terms to resolve, on a global basis, all claims that the Receiver, JOLs, Party Investors, or any other Investor or entity has asserted or could assert against the Deloitte Entities arising out of or in any way related to the professional services provided by the Deloitte Entities to the DLI Entities;

WHEREAS, the Parties and the Deloitte Entities executed the Confidential Settlement Agreement and Release (“**Original Settlement Agreement**”) on April 6-8, 2021, and the Receiver filed a Memorandum of Points and Authorities in Support of Motion of Receiver for: (1) Approval of Settlement With Deloitte Entities; (2) Entry of Scheduling Order; and (3) Entry of Bar Order (the “**Receiver’s Motion**”) on April 8, 2021, requesting that the court in the SEC Action approve, on a preliminary basis, the Original Settlement Agreement;

WHEREAS, Exhibit G to the Original Settlement Agreement was the Agreement Regarding Disbursement of Attorneys’ Fees (“**Original Attorneys’ Fee Agreement**”);

WHEREAS, on June 14, 2021, the court in the SEC Action held a hearing on the Receiver’s Motion and directed certain questions and instructions to the Parties and the Deloitte Entities;

WHEREAS, the Parties and the Deloitte Entities, having taken the court in the SEC Action's questions and instructions under due consideration, memorialized their settlement in a long-form writing entitled Amended Confidential Settlement Agreement and Release (the "**Master Agreement**") entered into contemporaneously herewith;

WHEREAS, the Parties wish to amend the Original Attorneys' Fee Agreement to comport with the Master Agreement, and memorialize the way in which the attorneys' fees to counsel for the Party Investors will be addressed and handled;

WHEREAS, all capitalized terms used in this Agreement shall have the meaning given to them in the Master Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. ATTORNEYS' FUND

1.1. The Receiver, JOLs, DLI Entities, and Party Investors agree that, upon payment of the Settlement Fund, fifteen percent (15%) of the Settlement Fund, or Four Million Six Hundred and Fifty Thousand Dollars (\$4,650,000.00), shall be set aside to compensate the attorneys who represented the Party Investors (the "**Attorneys' Fund**") for their assistance in achieving the settlement memorialized in the Master Agreement.

1.2. The Receiver, JOLs, and DLI Entities agree not to oppose or otherwise object to the application by counsel for the Party Investors in the SEC Action for an award of attorneys' fees and reimbursement of expenses up to the full amount of the Attorneys' Fund, so long as such application is consistent with the terms of this Agreement. Notwithstanding the foregoing, in the event the court in the SEC Action approves an amount to be disbursed from the Attorneys' Fund that is less than the full amount held in the Attorneys' Fund, that difference shall be promptly disbursed to the Receiver for the benefit of the estate of the DLI Entities, subject to the approval by the court in the SEC Action.

1.3. Subject to approval by the Court in the SEC Action and except as that Court may otherwise direct, the Receiver, JOLs, DLI entities, and Party Investors agree that the Attorneys' Fund shall be distributed by the Receiver in accordance with the following provisions:

(a) Within thirty (30) days after entry of the Scheduling Order, one counsel representing the Party Investors, copying all other counsel representing the Party Investors, shall advise the Receiver, in writing, that they have agreed on an allocation of the Attorneys' Fund. If approved by the court in the SEC Action, the Receiver shall disburse the Attorneys' Fund in accordance with that allocation.

(b) If counsel representing the Party Investors are unable to reach agreement as to the allocation of the Attorneys' Fund, they shall file motions for attorneys' fees before the court in the SEC Action and the court in the SEC Action shall establish the distribution allocation for the Attorneys' Fund.

(c) Notwithstanding any other provisions in this Agreement, the Receiver shall not disburse any monies held in the Attorneys' Fund until the Effective Date.

(d) No counsel for the Party Investors shall be entitled to further compensation from the Receiver, JOLs, DLI Entities, or Deloitte Entities. The Attorneys' Fund shall be sole source of compensation for counsel for the Party Investors.

(e) The resolution of the distribution of the Attorneys' Fund shall have no impact on the other terms of the Master Agreement. All other terms of the Master Agreement shall remain in full force and effect irrespective of any issues regarding the allocation or distribution of the Attorneys' Fund and irrespective of any decision by the court in the SEC Action regarding the allocation or disbursement of the Attorneys' Fund.

SECTION 2. MISCELLANEOUS

2.1. Entire Agreement. This Agreement is the final, complete, and exclusive agreement of the Parties with respect to the subject matter hereof, and supersedes and merges all prior and contemporaneous discussions, representations, promises, understandings and agreements, whether written or oral, between the Parties with respect to such subject matter.

2.2. Amendments. This Agreement may be modified or amended only by a written instrument duly executed by each of the Parties.

2.3. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the United States of America and the State of California, in each case, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of any other jurisdiction.

2.4. Execution. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same agreement. This Agreement may be executed by facsimile or by a PDF image delivered via e-mail copy of this Agreement, including the signature pages, which facsimile or PDF image shall be deemed an original.

[Remainder of Page Intentionally Left Blank]

Dated: *May 24, 2022*

On behalf of the Receiver and JOLs



Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated:

On behalf of the Jackson Group

Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor
Boston, MA 02210
Telephone: (617) 778-9128

Dated:

On behalf of the Century Group

Tyler Meade
THE MEADE FIRM PC
12 Funston Avenue, Suite A
San Francisco, CA 94129
Telephone: (415) 724-9600

Michael Reiser
REISER LAW, P.C.
1475 N. Broadway, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 256-0400

Dated:

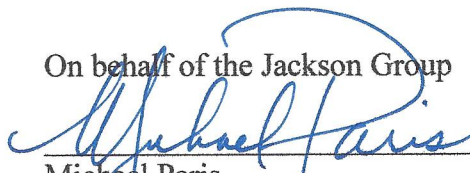
On behalf of the Receiver and JOLs

Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated:

5/24/22

On behalf of the Jackson Group



Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor
Boston, MA 02210
Telephone: (617) 778-9128

Dated:

On behalf of the Century Group

Tyler Meade
THE MEADE FIRM PC
12 Funston Avenue, Suite A
San Francisco, CA 94129
Telephone: (415) 724-9600

Michael Reiser
REISER LAW, P.C.
1475 N. Broadway, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 256-0400

Dated:

On behalf of the Receiver and JOLs

Christopher D. Sullivan
DIAMOND McCARTHY LLP
150 California Street, Suite 2200
San Francisco, CA 94111
Telephone: (415) 692-5200

Dated:

On behalf of the Jackson Group

Michael Paris
NYSTROM, BECKMAN & PARIS LLP
One Marina Park Drive, 15th Floor
Boston, MA 02210
Telephone: (617) 778-9128

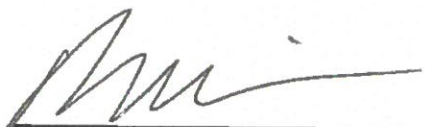
Dated:

5/24/22

On behalf of the Century Group



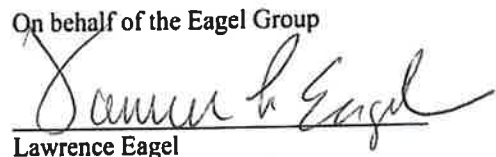
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Jeffrey C. Schneider
Jason Kellogg
**DEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
201 South Biscayne Boulevard, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788

Dated: *May 24, 2022*

On behalf of the Egel Group

Lawrence Egel
BRAGAR, EAGEL & SQUIRE
885 3rd Avenue, Suite 3040
New York, NY 10022
Telephone: (212) 308-5858

Dated: May 24, 2022


On behalf of Class Plaintiffs

David E. Azar
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
DAVID E. AZAR (SBN 218319)
280 S. Beverly Drive, Suite PH
Beverly Hills, California 90212
Telephone: (213) 617-1200
dazar@mcb.com



EXHIBIT G

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

**[PROPOSED] ORDER
APPROVING
ATTORNEYS’ FUND**

This matter is before the Court on the Motion for Approval of Attorneys’ Fund filed by all counsel for the Party Investors (as defined below) (the “**Motion**”). The Motion relates to the Receiver’s motion for (i) Approval of Settlement with the Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement filed by the Receiver (the “**Amended Approval Motion**”). Following a hearing held on June 14, 2021 on a prior motion for approval, the Parties subsequently modified the Settlement. The terms of the modified Settlement are contained in the Amended Confidential Settlement Agreement and Release attached as Exhibit 1 to the Supplemental Declaration of Bradley D. Sharp accompanying the Amended Approval Motion (“**Amended Settlement Agreement**”). The Amended Approval Motion concerns a proposed settlement among and between, on the one hand, (a) Bradley D. Sharp, in his capacity as the Court-appointed Receiver (the “**Receiver**”) for the estate of Direct Lending Investments, LLC, Direct Lending

1 Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc.,
2 DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership) (collectively,
3 the “**DLI Entities**”); (b) Bradley D. Sharp and Christopher D. Johnson, in their
4 capacities as Joint Official Liquidators of Direct Lending Income Feeder Fund, Ltd.
5 (in official liquidation) (“**JOLs**”); (c) investors in the DLI Entities that participated
6 in the Mediation (as defined in the Amended Settlement Agreement) and identified
7 in Exhibit A to the Amended Settlement Agreement (“**Party Investors**”); and, on
8 the other hand, (d) Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte &
9 Touche Cayman Islands (collectively, the “**Deloitte Entities**”).

10 At mediation, the Party Investors were represented by The Meade Firm p.c.,
11 Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP, Nystrom
12 Beckman & Paris LLP, Bragar Eigel & Squire, P.C., Ahdoot and Wolfson PC, and
13 Milberg Phillips Grossman LLP (collectively, the “**Firms**”). Specifically, (1) the
14 Century Group was represented by The Meade Firm P.C., Reiser Law P.C., and
15 Levine Kellogg Lehman Schneider + Grossman LLP; (2) the Jackson Group, which
16 includes Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche LLP*,
17 Case No. 20GDCV00419 (Ca. Super. Ct.), was represented by Nystrom Beckman &
18 Paris LLP; (3) the Eigel Group was represented by Lawrence Eigel of Brager, Eigel
19 & Squire LLP; and (4) the Class Plaintiffs, who are putative lead plaintiffs in the
20 action *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement*
21 *Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.)
22 were represented by putative class counsel Ahdoot and Wolfson PC and Milberg
23 Phillips Grossman LLP. Capitalized terms not otherwise defined in this order shall
24 have the meaning assigned to them in the Amended Settlement Agreement.

25 Following notice and a hearing, and having considered the filings and heard
26 the arguments of counsel, the Court hereby **GRANTS** the Motion.

27 **I. INTRODUCTION**

28

1 This action arises from a series of events, including fraudulent activities by
2 DLI Entities' management, leading to the collapse of the DLI Entities. On April 1,
3 2019, this Court appointed the Receiver to serve as permanent receiver of the estate
4 of the DLI Entities. After a period of investigation, the Receiver believed to have
5 identified potential claims against third parties, including the Deloitte Entities. The
6 Deloitte Entities have always denied and continue to expressly deny any and all
7 allegations of negligence or wrongdoing.

8 By agreement effective August 3, 2020, the Receiver, JOLs, and the Deloitte
9 Entities determined to engage in a mediation process to explore a mutually agreeable
10 resolution of the Receiver and JOLs' potential claims against the Deloitte Entities
11 related to the Deloitte Entities provision of professional services to the DLI Entities.
12 At various times following August 3, 2020, the Party Investors joined the mediation
13 process, agreeing to stay any actions that had already been filed against the Deloitte
14 Entities and/or forbear from filing any such actions.

15 Under the terms of the Settlement Agreement, the Deloitte Entities will fund
16 the Settlement Fund in the amount of thirty-one million U.S. dollars (\$31,000,000)
17 to be deposited into escrow accounts to be identified by the Receiver.

18 The Court entered a Scheduling Order on _____, 2022 [ECF No.
19 ____], which, *inter alia*, preliminarily approved the Amended Settlement Agreement,
20 approved the form, and content of the Notice of Settlement, the Publication Notice,
21 and the Opt-out Notices and method and manner of service and publication, and set
22 the date for a final approval hearing on the Amended Approval Motion.

23 On _____, 2022, the Court held the scheduled final approval hearing.
24 For the reasons set forth herein, the Court finds that the amount of the Attorneys'
25 Fund sought in the Motion is fair and reasonable and thus appropriate.

26 **II. ORDER**

27 It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

- 28 1. The Motion is GRANTED in its entirety.

1 2. The Court has jurisdiction over the subject matter of this action, and the
2 Firms are the proper parties to seek entry of this Order.

3 3. The Court finds that the amount sought as attorneys' fees in the Motion,
4 fifteen percent (15%), is fair and reasonable. The Settlement was achieved, in part,
5 by the Firms, who accepted the engagement on a contingency and modified
6 contingency fee basis and, thus, undertook and accepted substantial risks of non-
7 payment for their work on the matter.

8 4. This Court has considered the requested fees in light of the value of the
9 relief obtained and finds that counsel for the Party Investors have achieved more
10 than some degree of success on the merits. The Court finds that fifteen percent
11 (15%) is fair and reasonable using the "percentage of recovery" method and the
12 "lodestar" crosscheck. The Ninth Circuit has established 25% as the benchmark for
13 a reasonable fee award and the requested award falls well below that benchmark.
14 Indeed, courts within this Circuit have routinely awarded attorneys' fees in excess
15 of 30 percent (30%) of a settlement amount, so the requested fee award here falls
16 well below that range and well below the range of customary fees in the private
17 market, which also oftentimes exceeds thirty percent (30%).

18 5. Here, the Firms, along with the Receiver, obtained a substantial
19 recovery for Investors. Due to the complexity of factual and legal issues, this matter
20 required a high degree of skill and experience, and there was a risk that that investors
21 ultimately may not prevail. In sum, each of the factors supports the Firms' request
22 for approval of the Attorneys' Fund equal to 15% of the Settlement Fund.

23 6. The Court has reviewed the declarations supplied by the Firms and
24 finds that the lodestar crosscheck also confirms the reasonableness of the requested
25 fee award.

26 7. The Court notes that the Receiver and the Deloitte Entities have not
27 objected to the Motion. The Court has also been advised that the Firms have reached
28 agreement about the way in which to allocate the fees sought among them.

1 8. Accordingly, the Receiver shall distribute fifteen percent (15%) of the
2 Settlement Fund to the Firms based on the allocation to which they have agreed.

3 9. Without in any way affecting the finality of this Order, the Court retains
4 continuing and exclusive jurisdiction over the Parties for purposes of, among other
5 things, the administration, interpretation, consummation, and enforcement of this
6 Order.

7

8 **IT IS SO ORDERED**

9 Signed on _____, 2022

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DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

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EXHIBIT H

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS, LLC,

Defendant.

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

**NOTICE TO DIRECT
LENDING INCOME FUND
INVESTORS OF
SETTLEMENT AND RIGHT
OF EXCLUSION FROM
SETTLEMENT**

The purpose of this Notice is to inform you that a proposed settlement has been reached with Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) and to inform you of your right to exclude yourself from participation in the Settlement (“Settlement” described below) pursuant to procedures explained in this Notice. If you exclude yourself (i.e., opt out of) the Settlement, you will not be entitled to receive any of the Settlement Amount (“Settlement Amount” defined below). Additionally, if too many DLIFF and/or DLIF investors decide to take action and opt out, the Deloitte Entities may withdraw from the Settlement. If you do nothing, you may be entitled to receive a distribution from the Settlement Amount. This Notice describes important rights you may have and the steps you must take if you wish to be excluded from the Settlement.

While you are entitled to opt out from the terms of the Settlement, opting out may risk the Deloitte Entities withdrawing from, and in effect, terminating the Settlement. This

1 **notice explains the Settlement and the consequences of opting out. You should consider**
2 **consulting with your attorney regarding the Settlement, your choices, and this Notice.**

3 **A federal court authorized this Notice. This is not a solicitation from a lawyer.**

4 **The Settlement:** The following parties have reached an agreement (the “**Amended**
5 **Settlement Agreement**”) among and between, on the one hand, (a) Bradley D. Sharp, in his
6 capacity as the Court-appointed Receiver (the “**Receiver**”) for the estate of Direct Lending
7 Investments, LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd.,
8 DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership)
9 (collectively, the “**DLI Receivership Entities**”); (b) Bradley D. Sharp and Christopher D.
10 Johnson, in their capacities as Joint Official Liquidators (“**JOLs**”) of Direct Lending Income
11 Feeder Fund, Ltd. (in official liquidation) (“**DLIFF**”) (DLIFF, together with the DLI Receivership
12 Entities, the “**DLI Entities**”); (c) investors in the DLI Entities (“**Investors**”) that participated in
13 the Mediation (as defined in the Amended Settlement Agreement) and identified in Exhibit A to
14 the Amended Settlement Agreement (“**Party Investors**”) (specifically, those Investors represented
15 by The Meade Firm P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman
16 LLP; those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*, Case No.
17 20GDCV00419 (Ca. Super. Ct.) (the “**Jackson Action**”) and represented by Nystrom Beckman &
18 Paris LLP; those Investors represented by Bragar Eigel & Squire, P.C.; and those Investors that
19 are putative lead plaintiffs in the action *Marcia Kosstrin Trust and Professional Home*
20 *Improvements, Inc. Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-
21 02452 (C.D. Cal.) and represented by putative class counsel Ahdoot and Wolfson PC and Milberg
22 Coleman Bryson Phillips Grossman PLC); and, on the other hand, (d) Deloitte & Touche, LLP,
23 Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte**
24 **Entities**”).

25 Under the terms of the Amended Settlement Agreement, the Deloitte Entities will pay the
26 amount of thirty-one million U.S. dollars (\$31,000,000) (the “**Settlement Amount**”) to be
27 deposited into escrow account(s). The Settlement Amount less attorneys’ fees and expenses in an
28 amount of up to \$4.65 million to be determined by the Court in the SEC Action (the “**SEC Action**”

1 defined below) will be paid to Direct Lending Income Fund, L.P. (“DLIF”) and DLIFF in
2 accordance with the percentage split for recoveries as previously approved by the Court [Dkt. No.
3 318]. The portion of the Settlement Amount to DLIF will be subject to a reserve for potential taxes
4 with the remainder to be distributed to persons or entities that invested, through the purchase of
5 limited partnership interests or otherwise, in DLIF (the “**DLIF Investors**”) that do not exclude
6 themselves from the Settlement pursuant to the procedures described in this Notice (the
7 “**Participating DLIF Investors**”). The separate portion of the Settlement Amount to DLIFF will
8 be distributed to creditors and persons or entities that invested, through the purchase of shares, in
9 DLIFF (the “**DLIFF Investors**”) in accordance with Cayman Islands law. In return: (a) the
10 Receiver, the JOLs, the DLI Entities, the Party Investors (the “**Claimants**”), and Participating
11 DLIF Investors will release all claims against the Released Deloitte Entities¹ relating to or in
12 connection with the professional services provided by the Deloitte Entities to the DLI Entities
13 among other Released Claims (“**Released Claims**” defined below); (b) the Claimants,
14 Participating DLIF Investors and DLIFF Investors that do not exclude themselves from the
15 Settlement (the “**Participating DLIFF Investors**” (Participating DLIFF Investors and
16 Participating DLIF Investors are referred to together as “Participating Investors”)) shall forever be
17 barred and enjoined by judgment of the Court in the SEC Action from commencing, prosecuting,
18 or seeking monetary relief or any other relief in any court, arbitration proceeding, or other forum
19 in the United States against the Deloitte Entities with respect to the Released Claims; and (c) any
20 final verdict or judgment obtained by or on behalf of any Claimant or Participating DLIF Investor

21

22 ¹ “Released Deloitte Entities” means (a) the Deloitte Entities; (b) the Deloitte Entities’
23 predecessors, successors, Affiliates, Subsidiaries, divisions, assignors, and assignees; (c) each of
24 the foregoing’s past, present, and future officers, directors, board and board members, principals,
25 partners, officials, employees, Subsidiaries, parents, Affiliates, divisions, joint venturers,
26 contractors, subcontractors, subrogees, offices, controlled Persons, predecessors, successors,
27 assignors, assigns, transferees, heirs, executors, shareholders, owners, investors, accountants,
28 auditors, advisors, trustees, fiduciaries, consultants, agents, representatives, nominees, attorneys,
partners, associates, senior counsel, managers, and members, in each case individually and
collectively, together with any of their respective predecessors and successors in interest; and (d)
each of the Deloitte Entities’ insurers, reinsurers, excess insurers, underwriters, and claims
administrators. For avoidance of doubt, “Released Deloitte Entities” include, without limitation,
Deloitte & Touche, LLP, Deloitte Tax LLP, Deloitte & Touche LLP (Cayman Islands), Deloitte
LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Transactions
and Business Analytics LLP, Deloitte Services LP, and Deloitte USA LLP.

1 against any Third Party will be reduced ² by the proportionate fault of the Released Deloitte
2 Entities, unless governing law requires otherwise.

3 The Receiver filed the Amended Motion for (i) Approval of Settlement Agreement with
4 the Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement
5 (the “**Amended Approval Motion**”). Following a hearing held on June 14, 2021 on the prior
6 motion for approval, the Parties subsequently amended the settlement, the terms of which are
7 contained in the Amended Settlement Agreement. The Receiver and the Deloitte Entities filed a
8 Joint Status Conference Statement, describing ways in which the Amended Settlement Agreement
9 was revised to address certain questions the Court in the SEC Action had raised about the original
10 agreement. The Parties to the Amended Settlement Agreement seek approval of the Court in the
11 SEC Action of the terms of the Amended Settlement Agreement and entry of a final order
12 approving the Settlement (the “**Order Approving Settlement**”). For further details on the
13 Settlement, please consult the Notice of Settlement that you have been served along with this
14 Notice. You may also obtain copies of the Amended Settlement Agreement, the proposed Order
15 Approving Settlement, the Amended Approval Motion, the Joint Status Conference Statement,
16 and supporting papers from the Court’s docket in the SEC Action [ECF Nos _____] and from the
17 Receiver’s website (<http://case.stretto.com/dli>).

18 **Attorneys’ Fees:** Counsel for the Party Investors have asked the Court in the SEC Action
19 for a fee award based upon fifteen percent (15%) of the Settlement Amount (a total of \$4.65
20 million).

21 **Deadlines:** The following deadlines apply to the Settlement:

22 Request exclusion from the Settlement: _____, 2022

23 Submit an Objection: _____, 2022

24 Court Hearing on the Amended Approval Motion: _____, 2022

25

26 **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

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28 ² Third Party means any nonparty to the Amended Settlement Agreement that has been or may be sued by any of the Claimants or Participating Investors for claims relating to, or in connection with the DLI Entities.

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YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	If you agree to the Settlement and wish to participate in a distribution of proceeds from the Settlement, you do not need to do anything. If you do nothing and the Court approves the Settlement, you will release all claims against the Deloitte Entities related in any way to the professional services provided by the Deloitte Entities to the DLI Entities. You will also be barred by court order from pursuing your own lawsuit against the Deloitte Entities in the United States related in any way to the professional services provided by the Deloitte Entities to the DLI Entities.
“OPT OUT” TO EXCLUDE YOURSELF FROM THE SETTLEMENT TERMS	If you opt-out from the Settlement, you will get no payment. This is the only option that allows you to pursue your own lawsuit against the Deloitte Entities related in any way to the professional services provided by the Deloitte Entities to the DLI Entities. If you opt-out, you can still object to the Settlement.
SUBMIT AN OBJECTION	You may object to the Settlement, the terms of the Amended Settlement Agreement, or the Order Approving Settlement, and request that the Court not approve the Settlement. If you object to the Settlement, you must also elect whether to opt-out. If you object to the Settlement and you do not exclude yourself, and your objection is overruled by the Court, you will participate in a distribution of proceeds from the Settlement and release and be barred from pursuing your own lawsuit against the Deloitte Entities related in any way to the professional services provided by the Deloitte Entities to the DLI Entities.

The Court in *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (C.D. Cal.) (the “**SEC Action**”) must decide whether to approve the

1 Settlement. The Court will consider whether the Amended Settlement Agreement is adequate, fair,
2 and reasonable. Distributions will only be made if the Court approves the Settlement and after
3 objections or appeals, if any, are resolved.

4 **THE SETTLEMENT BENEFITS - WHAT CAN YOU GET**

5 **1. What does the Settlement provide?**

6 The Deloitte Entities have agreed to pay \$31,000,000 in cash pursuant to the Settlement
7 Agreement to be deposited into escrow account(s) to be identified by the Receiver. The Settlement
8 Amount less any Attorneys' Fees and expenses awarded by the Court in the SEC Action shall
9 constitute the "**Net Settlement Amount.**"

10 **2. How will the Settlement be allocated?**

11 The Net Settlement Amount will be distributed to DLIF and DLIFF in accordance with
12 the prior Court-approved Claims Allowance Stipulation to divide certain proceeds by the
13 Receivership Entities between DLIF and DLIFF. A portion of the Net Settlement Amount will be
14 distributed by the Receiver on a pro rata basis to Participating DLIF Investors. This pro rata
15 distribution will be based on each DLIF Investor's Net Investment (Total Investment less pre-
16 receivership returns). The separate portion of the Net Settlement Amount to be received by DLIFF
17 will be distributed by the JOLs in accordance with Cayman Islands law.

18 The amount of the distribution from the Net Settlement Amount that you may receive
19 cannot be determined at this time with accuracy because the distribution depends on whether other
20 Investors exclude themselves from the Settlement and on the amount of Attorneys' Fees awarded
21 to the counsel for the Party Investors.

22 **3. What am I giving up to potentially get a payment?**

23 Unless you exclude yourself from the Settlement pursuant to the procedures described in
24 this Notice, you will have released all Released Claims ("**Released Claims**" defined below)
25 against the Deloitte Entities, and you will be barred and enjoined from prosecuting any Released
26 Claims against the Deloitte Entities.

27
28 Released Claims means, to the fullest extent that the law permits their release, all past,
present, and future claims of any nature whatsoever, including, without limitation, all

1 claims, suits, actions, allegations, damages (including, without limitation, contributory,
2 compensatory, punitive, exemplary, rescissory, direct, consequential or special damages,
3 restitution, and disgorgement), liabilities, causes of action, complaints, lawsuits,
4 responsibilities, demands, rights, debts, penalties, costs, expenses, fees, injunctive relief,
5 attorneys' fees, expert or consulting fees, prejudgment interest, indemnities, duties, losses,
6 and obligations of any kind, known or unknown, foreseen or unforeseen, whether or not
7 concealed or hidden, asserted or unasserted, existing or contingent, direct or indirect,
8 anticipated or unanticipated, asserted or that could have been asserted by, or on behalf of,
9 for the benefit of, or in the name of the Claimants or Participating DLIF Investors, whether
10 legal, contractual, rescissory, statutory, or equitable in nature, whether arising under
11 federal, state, common or foreign law, that now exist, have ever existed, or might ever
12 exist, from the beginning of time in perpetuity, that are based upon, arise out of, or are
13 related in any way to: (a) the professional services provided by the Deloitte Entities to the
14 DLI Entities; (b) the conduct, transactions, or occurrences set forth in any of the pleadings
15 in the Related Actions³; (c) the Related Actions; and (d) the conduct and subject matter of
16 the Mediation⁴, Settlement negotiations, and the negotiation of this Agreement (except for
17 representations or obligations expressly included in this Agreement), including without
18 limitation fraud in the inducement thereof.

19 Put simply, you will not be able to able to pursue any lawsuit or any claim against the Deloitte
20 Entities that in any way is related to the services provided by the Deloitte Entities to the DLI
21 Entities.

22 Additionally, if you do not exclude yourself from the Settlement pursuant to the procedures
23 described in this Notice, you are agreeing to, and by order of the Court in the SEC Action will be
24 required to, reduce the amount of any final verdict or judgment you obtain against any Third Party
25 by an amount that corresponds to the percentage of responsibility of the Released Deloitte Entities
26 for common damages. However, where the law governing such final verdict or judgment ("**Other**
27 **Governing Law**") requires a reduction in a different amount, the final verdict or judgment shall
28 be reduced by an amount as provided by Other Governing Law.

29 ³ The Related Actions mean collectively the SEC Action, the Jackson Action, and the lawsuit
30 titled *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement Plan v.*
31 *Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.)

32 ⁴ Mediation means the mediation that took place on December 21 and 22, 2020 between the
33 Receiver, JOLs, the DLI Entities, the Party Investors, and the Deloitte Entities, leading to the
34 Settlement.

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EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from the Settlement, but you want to keep any right to bring a claim, sue, or continue to sue the Deloitte Entities on your own for any Released Claims, then you must take the following steps. This is called “excluding yourself” and is sometimes referred to as “opting out.”

In the event that Investors that opt out of the Settlement exceed a certain threshold agreed upon by the parties to the Amended Settlement Agreement, the Deloitte Entities have the sole and exclusive right to withdraw from and terminate the Settlement. The Receiver and the JOLs believe that the Settlement is beneficial for all investors and creditors of the DLI Entities.

4. How do I opt out?

To exclude yourself from the Settlement, you must send a letter by e-mail stating that you want to be excluded from the Settlement in *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (C.D. Cal.). You must include your name, address, telephone number, and e-mail address on the letter. You must sign the letter and e-mail it so that it is received no later than _____, 2022 to:

TeamDLI@stretto.com

You cannot exclude yourself on the phone. You must submit the written exclusion request via e-mail as noted above.

If you ask to be excluded, you are not eligible to receive any Settlement payment. By opting out, you will not receive any benefit from the Settlement.

5. If I do not opt out, can I sue the Deloitte Entities for the same claim later?

No. Unless you exclude yourself, you give up the right to sue the Deloitte Entities for the Released Claims. If you have a pending lawsuit against any of the Deloitte Entities, speak to your lawyer in that case immediately. Remember, the exclusion date is _____, 2022.

6. If I opt out, can I get money from the Settlement?

No. If you exclude yourself, you will not be entitled to any distribution under the Settlement described here. But you may sue, continue to sue, or be part of a different lawsuit against the Deloitte Entities asserting a Released Claim.

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OBJECTING TO THE SETTLEMENT

You can tell the Court in the SEC Action that you do not agree with the Settlement, the Amended Settlement Agreement, or the Order Approving the Settlement.

7. How do I object?

If you wish to object to the terms of the Amended Settlement Agreement or the Order Approving the Settlement, or you wish to appear at the Final Approval Hearing (the “**Final Approval Hearing**” described below), you must submit a written objection via e-mail to TeamDLI@stretto.com, no later than _____, 2022. All objections must:

- a. contain the name, address, telephone number, and an email address of the Person filing the objection;
- b. contain the name, address, telephone number, and email address of any attorney representing the Person filing the objection;
- c. be signed by the Person filing the objection, or his or her attorney;
- d. state, in detail, the basis for any objection;
- e. attach any document the Court should consider in ruling on the Amended Settlement Agreement and the Order Approving the Settlement;
- f. if you wish to appear at the Final Approval Hearing make a request to do so.

Please note that if you do not submit an objection by the time and in the manner provided above, you will be deemed to have waived the right to object (including any right to appeal) and shall be forever barred from raising such objections in the SEC Action or any other action or proceeding. The Court may decline to permit anyone who fails to submit a written objection and request to appear at the Final Approval Hearing from appearing at the Final Approval Hearing. The Court will exercise discretion as to whether it wishes to hear from any person or entity who fails to make a timely written objection and request to appear.

If you do not opt-out and you object to the Settlement, and your objection is overruled by the Court, you will release and be barred from pursuing your own lawsuit against the Deloitte

1 Entities related in any way to the professional services provided by the Deloitte Entities to the DLI
2 Entities.

3 You do not need to appear at the Final Approval Hearing or take any other action to indicate
4 your approval.

5 **FINAL APPROVAL HEARING**

6 The Court in the SEC Action will hold a hearing to decide whether to approve the Amended
7 Settlement Agreement and enter the Order Approving the Settlement.

8 **8. When and where will the Court decide whether to approve the Settlement?**

9 The Court will hold the Final Approval hearing on the Settlement at __:__ .m. on
10 _____, 2022, in Courtroom 7D of the United States District Court for the Central District
11 of California, First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012. The
12 purposes of the Final Approval Hearing will be to: (i) determine whether the terms of the Amended
13 Settlement Agreement should be finally approved by the Court; (ii) determine whether the Order
14 Approving the Settlement should be entered by the Court; (iii) rule upon any objections to the
15 Amended Settlement Agreement or the Order Approving Settlement; and (v) rule upon such other
16 matters as the Court may deem appropriate. At the hearing, the Court will consider whether the
17 Amended Settlement Agreement is adequate, fair, and reasonable.

18 **9. Do I need to come to the Final Approval Hearing?**

19 No. If you submit an objection, you do not have to come to the Court to talk about it. As
20 long as your written objection is received on time, the Court will consider it. If you wish to make
21 an appearance at the Final Approval Hearing, you must make a request to do so in your objection.

22 **IF YOU DO NOTHING**

23 **10. What happens if I do nothing at all?**

24 You do not have to do anything to participate in the Settlement. If the Court in the SEC
25 Action grants final approval of the Settlement and enters the Order Approving the Settlement, you
26 will be bound by the Settlement (including the releases) and if you are a DLIF Investor, you will
27 receive payment on a pro rata basis as discussed above in Paragraph 2.

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IF YOU WANT MORE INFORMATION

11. How do I get more details on the Settlement?

This Notice does not provide all the details of the Settlement and the Amended Settlement Agreement. For further details, you can obtain copies of the Amended Settlement Agreement, the proposed Order Approving the Settlement, the Notice of Settlement, the Amended Approval Motion, the Joint Status Conference Statement, and other supporting papers from the Receiver’s website (<http://case.stretto.com/dli>). Copies of these documents may also be requested by email, by sending the request to TeamDLI@stretto.com; or by telephone, by calling the Stretto Administrator at 855-885-1564.

Dated:

DIAMOND MCCARTHY LLP

By: /s/ Christopher D. Sullivan
Christopher D. Sullivan, counsel
For Bradley D. Sharp,
Permanent Receiver

EXHIBIT I

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS, LLC,

Defendant.

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

**NOTICE TO DIRECT
LENDING INCOME FEEDER
FUND INVESTORS OF
SETTLEMENT AND RIGHT
OF EXCLUSION FROM
SETTLEMENT**

You are receiving this Notice as an investor in Direct Lending Income Feeder Fund Ltd. (“DLIFF”). A federal court in the United States authorized this Notice. This is not a solicitation from a lawyer.

The purpose of this Notice is to inform you that a proposed settlement has been reached with Deloitte & Touche, LLP, Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (the “Deloitte Entities”). Among the recoveries pursued on behalf of DLIFF, as well as Direct Lending Income Fund, L.P. (“DLIF”), are claims against the Deloitte Entities in respect of the provision of audit services by the Deloitte Entities. Such claims are related to proceedings in the United States , including those pending in the U.S. District Court for the Central District of California with the case number 2:19-cv-02188-DSF-MRW (the “U.S. Receivership Proceedings” and the “U.S. Receivership Court” respectively). If approved by the U.S. Receivership Court, the proposed settlement will result in monies being paid by the Deloitte Entities to escrow accounts established by the Receiver

1 for DLIF, who will then distribute a portion of the monies to the Joint Official Liquidators
2 (the “JOLs”) of DLIFF (the “Deloitte Settlement Monies”). The portion of the Deloitte
3 Settlement Monies distributed to DLIFF will be distributed to investors and creditors of
4 DLIFF in accordance with applicable Cayman Islands law.

5
6 The purpose of this Notice is also to inform you of your right to exclude yourself from
7 participation in the Settlement (the “Settlement” described below) pursuant to procedures
8 explained in this Notice. If you do nothing, and if the Receiver’s request that the U.S.
9 Receivership Court enter an order barring you from pursuing claims against the Deloitte
10 Entities in the United States is granted, you will be barred from pursuing claims against the
11 Deloitte Entities in the United States. You may also decide to exclude yourself from the
12 Settlement and the order barring you from pursuing claims against the Deloitte Entities in
13 the United States will not apply. However, if too many DLIFF and/or DLIF investors decide
14 to take action and exclude themselves (or “opt-out”), the Deloitte Entities may withdraw
15 from the Settlement. If the Deloitte Entities withdraw from the Settlement, investors and
16 creditors will lose the benefit of receiving the Settlement Monies.

17 While you are entitled to opt out from the terms of the Settlement, opting out may
18 risk the Deloitte Entities withdrawing from, and in effect, terminating the Settlement. This
19 notice explains the Settlement and the consequences of opting out. You should consider
20 consulting with your attorney regarding the Settlement, your choices, and this Notice.

21 **The Settlement:** The following parties have reached an agreement (the “Amended
22 Settlement Agreement”) among and between, on the one hand, (a) Bradley D. Sharp, in his
23 capacity as the Court-appointed Receiver (the “Receiver”) for the estate of Direct Lending
24 Investments, LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd.,
25 DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in Receivership)
26 (collectively, the “DLI Receivership Entities”); (b) Bradley D. Sharp and Christopher D.
27 Johnson, in their capacities as JOLs of Direct Lending Income Feeder Fund, Ltd. (in official
28 liquidation) (“DLIFF”) (DLIFF, together with the DLI Receivership Entities, the “DLI Entities”);

1 (c) investors in the DLI Entities (“**Investors**”) that participated in the Mediation (as defined in the
2 Amended Settlement Agreement) and identified in Exhibit A to the Amended Settlement
3 Agreement (“**Party Investors**”) (specifically, those Investors represented by The Meade Firm
4 P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP; those Investors
5 that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*, Case No. 20GDCV00419 (Ca.
6 Super. Ct.) (the “**Jackson Action**”) and represented by Nystrom Beckman & Paris LLP; those
7 Investors represented by Bragar Eigel & Squire, P.C.; and those Investors that are putative lead
8 plaintiffs in the action *Marcia Kosstrin Trust and Professional Home Improvements, Inc.*
9 *Retirement Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.)
10 and represented by putative class counsel Ahdoot and Wolfson PC and Milberg Coleman Bryson
11 Phillips Grossman PLC); and, on the other hand, (d) Deloitte & Touche, LLP, Deloitte Tax LLP,
12 and Deloitte & Touche LLP (Cayman Islands) (collectively, the “**Deloitte Entities**”).

13 Under the terms of the Amended Settlement Agreement, the Deloitte Entities will pay the
14 amount of thirty-one million U.S. dollars (\$31,000,000) (the “**Settlement Amount**”) to be
15 deposited into escrow account(s) for DLIF Investors; for DLIFF; and for payment of Court
16 approved attorneys’ fees. The Settlement will resolve all claims and potential claims by the
17 Receiver, the JOLs and all DLIF investors who do not opt out. The Settlement Amount, less
18 attorneys’ fees and expenses in an amount of up to \$4.65 million to be determined by the U.S.
19 Receivership Court, will be distributed to DLIFF and DLIF in accordance with the prior Court-
20 approved Claim Allowance Stipulation to divide certain proceeds received by the Receivership
21 Entities between DLIFF and DLIF. (“Claim Allowance Stipulation”) <http://case.stretto.com/dli>,
22 Dkt. No. 318-2). Any proceeds of the Settlement Amount received by DLIFF will be distributed
23 by the JOLs in accordance with Cayman Islands law. In return for the Settlement Amount, the
24 Receiver, the JOLs, the DLI Entities, and the Party Investors (the “**Claimants**”) will release all
25 claims against the Deloitte Entities relating to or in connection with the professional services
26 provided by the Deloitte Entities to the DLI Entities, among other Released Claims (“**Released**
27 **Claims**” defined below). In addition, the Settlement is conditioned upon the U.S. Receivership
28

1 Court in the SEC Action (the “**SEC Action**” defined below) entering an order barring those
2 investors in DLIF and DLIFF (which, for the avoidance of doubt, includes their successors and
3 assigns wherever referred to herein) who do not opt out from pursuing claims in the United States
4 against the Deloitte Entities. In addition, the Receiver, the JOLs and those investors in DLIF who
5 do not opt out agree that any final verdict or judgment obtained with respect to certain claims they
6 may pursue against a Third Party¹ will be reduced by the proportionate fault of the Released
7 Deloitte Entities², unless governing law requires otherwise.

8 The Receiver filed the Amended Motion for (i) Approval of Settlement Agreement with
9 the Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement
10 (the “**Amended Approval Motion**”). Following a hearing held on June 14, 2021 on a prior motion
11 for approval, the Parties subsequently amended the settlement, the terms of which are contained
12 in the Amended Settlement Agreement. The Receiver and the Deloitte Entities filed a Joint Status
13 Conference Statement, describing ways in which the Amended Settlement Agreement was revised
14 to address certain questions the U.S. Receivership Court had raised about the original agreement.
15 The Parties to the Amended Settlement Agreement seek approval of the U.S. Receivership Court
16 in the SEC Action of the terms of the Amended Settlement Agreement and entry of a final order
17 approving the Settlement (the “**Order Approving Settlement**”). For further details on the
18 Settlement, please consult the Notice of Settlement that you have been served along with this
19

20 ¹ “Third Party” means any nonparty to the Amended Settlement Agreement that has been or may
21 be sued by any of the Claimants or Participating Investors for claims relating to, or in connection
with the DLI Entities.

22 ² “Released Deloitte Entities” means (a) the Deloitte Entities; (b) the Deloitte Entities’
23 predecessors, successors, Affiliates, Subsidiaries, divisions, assignors, and assignees; (c) each of
the foregoing’s past, present, and future officers, directors, board and board members, principals,
24 partners, officials, employees, Subsidiaries, parents, Affiliates, divisions, joint venturers,
contractors, subcontractors, subrogees, offices, controlled Persons, predecessors, successors,
25 assignors, assigns, transferees, heirs, executors, shareholders, owners, investors, accountants,
auditors, advisors, trustees, fiduciaries, consultants, agents, representatives, nominees, attorneys,
26 partners, associates, senior counsel, managers, and members, in each case individually and
collectively, together with any of their respective predecessors and successors in interest; and (d)
27 each of the Deloitte Entities’ insurers, reinsurers, excess insurers, underwriters, and claims
administrators. For avoidance of doubt, “Released Deloitte Entities” include, without limitation,
28 Deloitte & Touche, LLP, Deloitte Tax LLP, Deloitte & Touche LLP (Cayman Islands), Deloitte
LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Transactions
and Business Analytics LLP, Deloitte Services LP, and Deloitte USA LLP.

1 Notice. You may also obtain copies of the Amended Settlement Agreement, the proposed Order
2 Approving Settlement, the Amended Approval Motion, the Joint Status Conference Statement,
3 and supporting papers from the Court’s docket in the SEC Action [ECF Nos _____] and from the
4 Receiver’s website (<http://case.stretto.com/dli>).

5 **Attorneys’ Fees:** Counsel for the Party Investors have asked the Court for a fee award
6 based upon fifteen percent (15%) of the Settlement Amount (a total of \$4.65 million).

7 **Deadlines:**

8 Request exclusion from the Settlement: _____, 2022

9 Submit an Objection: _____, 2022

10 Court Hearing on the Amended Approval Motion: _____, 2022

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12 **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
14 DO NOTHING	If you are in favor of the Settlement, which will provide millions of dollars to the investors and creditors of the DLI entities, you do not need to do anything. If you do nothing and the U.S. Receivership Court approves the Settlement, you will be barred from pursuing your own lawsuit against the Deloitte Entities in the United States related in any way to the professional services provided by the Deloitte Entities to the DLI Entities.
21 “OPT OUT” TO EXCLUDE YOURSELF FROM THE SETTLEMENT TERMS AND BEING BARRED	If you believe that you have independent claims against the Deloitte Entities related to the DLI Entities that you intend to pursue in the United States, you must opt-out in order to preserve your right to pursue such claims. Opting-out is the only way that you can preserve such claims if the Receivership Court approves the Settlement. If you opt out, you can still object to the Settlement.

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<p>SUBMIT AN OBJECTION</p>	<p>You may object to the Settlement, the terms of the Amended Settlement Agreement, or the Order Approving Settlement and request that the U.S. Receivership Court not approve the Settlement. If you object to the Settlement, you must also elect whether to opt-out. If you do not opt-out and the U.S. Receivership Court overrules your objection, you will be barred from pursuing your own lawsuit against the Deloitte Entities in the United States related in any way to the professional services provided by the Deloitte Entities to the DLI Entities.</p>
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The U.S. Receivership Court in *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-cv-2188 (C.D. Cal.) (the “**SEC Action**”) must decide whether to approve the Settlement. The U.S. Receivership Court will consider whether the Amended Settlement Agreement is adequate, fair, and reasonable. Distributions will only be made if the U.S. Receivership Court approves the Settlement and after objections or appeals, if any, are resolved.

THE SETTLEMENT BENEFITS - WHAT CAN YOU GET

1. What does the Settlement provide?

The Deloitte Entities have agreed to pay \$31,000,000 in cash pursuant to the Settlement Agreement to be deposited into escrow account(s) to be identified by the Receiver. The Settlement Amount, less any Attorneys’ Fees and expenses awarded by the U.S. Receivership Court, shall constitute the “**Net Settlement Amount**”.

2. How will the Settlement be allocated?

The Net Settlement Amount will be distributed to DLIF and to DLIFF in accordance with the prior Court-approved Claim Allowance Stipulation to divide certain proceeds received by the Receivership Entities between DLIFF and DLIF. The proceeds of the Net Settlement Amount received by DLIFF will be distributed by the JOLs in accordance with Cayman Islands law.

3. What am I giving up if I do not opt out?

1 If you do not opt out pursuant to the procedures described in this Notice, the U.S.
2 Receivership Court will be asked to enter an order barring and enjoining you from prosecuting any
3 claims against the Deloitte Entities in the United States based on the provision of audit services by
4 the Deloitte Entities.

5 Put simply, you will not be able to able to pursue any lawsuit or any claim against the
6 Deloitte Entities in the United States that in any way is related to the services provided by the
7 Deloitte Entities to the DLI Entities.

8 **THE PROCESS FOR OPTING OUT**

9 If you want to keep any right to bring a claim, sue, or continue to sue the Deloitte Entities
10 on your own in the United States, then you must take the following steps. This is called “excluding
11 yourself” or “opting out.” *If too many investors opt out, the Deloitte Entities may withdraw from*
12 *the Settlement. The Receiver and the JOLs believe that the Settlement is beneficial for all*
13 *investors and creditors of the DLI Entities.*

14 **4. How do I opt out?**

15 To opt out, you must send a written letter by e-mail stating that you want to opt out and not
16 be barred from pursuing claims you have and wish to bring in the United States against the Deloitte
17 Entities related to their work for the DLI Entities. Your email should reference this case as
18 follows: *Securities and Exchange Commission v. Direct Lending Investments, LLC*, Case No. 19-
19 cv-2188 (C.D. Cal.). You must include your name, address, telephone number, and e-mail address
20 on the written letter. You must sign the written letter and e-mail it so that it is received no later
21 than _____, 2022 to:

22 TeamDLI@stretto.com

23 You may not opt out over the telephone. You must submit the written exclusion request
24 via e-mail as noted above.

25 **5. If I do not opt out, can I sue the Deloitte Entities for the same claim later in the**
26 **United States?**

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1 No. Unless you opt-out, you will be barred by order of the Court from suing the Deloitte
2 Entities in the United States for claims based on the professional services provided by the Deloitte
3 Entities to the DLI Entities. If you have a pending lawsuit against any of the Deloitte Entities,
4 speak to your lawyer in that case immediately. Remember, the deadline to opt out is _____,
5 2022.

6 OBJECTING TO THE SETTLEMENT

7 You can also oppose approval of the Settlement, the Amended Settlement Agreement, or
8 the Order Approving the Settlement by objecting.

9 6. How do I object?

10 If you wish to object to the terms of the Amended Settlement Agreement or the Order
11 Approving the Settlement, or you wish to appear at the Final Approval Hearing (the "**Final**
12 **Approval Hearing**" described below), you must submit a written objection via e-mail to
13 TeamDLI@stretto.com, no later than _____, 2022. All objections must:

- 14 a. contain the name, address, telephone number, and an email address of the
15 Person filing the objection;
- 16 b. contain the name, address, telephone number, and email address of any
17 attorney representing the Person filing the objection;
- 18 c. be signed by the Person filing the objection, or his or her attorney;
- 19 d. state, in detail, the basis for any objection;
- 20 e. attach any document the Court should consider in ruling on the Amended
21 Settlement Agreement and the Order Approving the Settlement;
- 22 f. if you wish to appear at the Final Approval Hearing make a request to do
23 so.

24 Please note that if you do not submit an objection by the time and in the manner provided
25 above, you will be deemed to have waived the right to object (including any right to appeal) and
26 shall be forever barred from raising such objections in the SEC Action or any other action or
27 proceeding in the United States. The U.S. Receivership Court may decline to permit anyone who
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1 fails to submit a written objection and request to appear at the Final Approval Hearing from
2 appearing at the Final Approval Hearing. The U.S. Receivership Court will exercise discretion as
3 to whether it wishes to hear from any person or entity who fails to make a timely written objection
4 and request to appear.

5 If you do not opt-out and you object to the Settlement, and your objection is overruled by
6 the U.S. Receivership Court, you will be barred from pursuing your own lawsuit in the United
7 States against the Deloitte Entities related in any way to the professional services provided by the
8 Deloitte Entities to the DLI Entities.

9 You do not need to appear at the Final Approval Hearing or take any other action to indicate
10 your approval.

11 **FINAL APPROVAL HEARING**

12 The Court in the SEC Action will hold a hearing to decide whether to approve the
13 Amended Settlement Agreement and enter the Order Approving the Settlement.

14 **7. When and where will the Court decide whether to approve the Settlement?**

15 The Court will hold the Final Approval hearing on the Settlement at __:___.m. on
16 _____, 2022, in Courtroom 7D of the United States District Court for the Central District
17 of California, First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012. The
18 purposes of the Final Approval Hearing will be to: (i) determine whether the terms of the
19 Amended Settlement Agreement should be finally approved by the U.S. Receivership Court;
20 (ii) determine whether the Order Approving the Settlement should be entered by the United
21 States Receivership Court; (iii) rule upon any objections to the Amended Settlement Agreement
22 or the Order Approving Settlement; and (v) rule upon such other matters as the U.S.
23 Receivership Court may deem appropriate. At the hearing, the U.S. Receivership Court will
24 consider whether the Amended Settlement Agreement is adequate, fair, and reasonable.

25 **8. Do I need to come to the Final Approval Hearing?**

26 No. If you submit an objection, you do not have to come to the Court to talk about it. As
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1 long as your written objection is received on time, the U.S. Receivership Court will consider it. If
2 you wish to make an appearance at the Final Approval Hearing, you must make a request to do
3 so in your objection.

4 **IF YOU DO NOTHING**

5 **9. What happens if I do nothing at all?**

6 You do not have to do anything. If you do not object to the U.S. Receivership Court
7 approving the Settlement and if you do not want to opt out, you do not need to do anything. If
8 you do nothing and the U.S. Receivership Court approves the Settlement, you will receive your
9 portion of the Settlement Monies, to the extent you are entitled in accordance with Cayman
10 Islands law, from the JOLs in the Cayman Islands. If you do nothing and the U.S. Receivership
11 Court grants final approval of the Settlement and enters the Order Approving the Settlement, you
12 will be barred from pursuing claims against the Deloitte Entities in the United States based on
13 the professional services provided by the Deloitte Entities to the DLI Entities.

14 **IF YOU WANT MORE INFORMATION**

15 **10. How do I get more details on the Settlement?**

16 This Notice does not provide all the details of the Settlement and the Amended
17 Settlement Agreement. For further details, you can obtain copies of the Amended Settlement
18 Agreement, the proposed Order Approving the Settlement, the Notice of Settlement, the Amended
19 Approval Motion, the Joint Status Conference Statement, and other supporting papers from the
20 Receiver's website (<http://case.stretto.com/dli>). Copies of these documents may also be requested
21 by email, by sending the request to TeamDLI@stretto.com; or by telephone, by calling the Stretto
22 Administrator at 855-885-1564.

24 Dated:

DIAMOND MCCARTHY LLP

25 By: /s/ Christopher D. Sullivan
26 Christopher D. Sullivan, counsel
27 For Bradley D. Sharp,
28 Permanent Receiver

1 CHRISTOPHER D. SULLIVAN (148083)
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3 STACEY L. PRATT (124892)
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6 150 California Street, Suite 2200
7 San Francisco, CA 94111
8 Phone: (415) 692-5200

9 *Counsel for Bradley D. Sharp,*
10 *Permanent Receiver*

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

**DECLARATION OF
CHRISTOPHER D. SULLIVAN IN
SUPPORT OF AMENDED MOTION
OF RECEIVER FOR 1) APPROVAL
OF SETTLEMENT WITH
DELOITTE ENTITIES; 2) ENTRY
OF SCHEDULING ORDER; AND 3)
ENTRY OF ORDER APPROVING
SETTLEMENT**

21 Date: July 25, 2022
22 Time: 1:30 p.m.
23 Dept.: Courtroom 7D
24 Place: United States District Court
25 Western Division
26 350 West 1st Street
27 Los Angeles, CA 90012
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1 I, Christopher D. Sullivan, declare and state:

2 1. I am an attorney at law duly admitted to practice before the Courts of
3 the State of California and am a Partner with the law firm of Diamond McCarthy,
4 LLP, counsel for Bradley D. Sharp in his capacity as Permanent Receiver. If called
5 upon to testify as to the facts set forth in this declaration, I could and would testify
6 competently thereto as the facts are true and within my personal knowledge.

7 2. I make this declaration in support of the Amended Motion for Approval
8 of Settlement with the Deloitte Entities; Entry of Scheduling Order; and Entry of
9 Order Approving Settlement Agreement (“Amended Motion”)

10 3. Diamond McCarthy LLP (“Diamond McCarthy”) is extremely
11 experienced and well-versed in analyzing the specific claims at issue here as it has an
12 expertise litigating claims for accounting malpractice in particular. The firm has
13 brought accounting malpractice claims in the past and at present. Diamond McCarthy
14 has served as lead trial counsel for various parties having significant roles in the
15 Enron/LJM2, Parmalat, Livent, Bayou Funds, Dreier, LLP, USA Commercial
16 Mortgage, Diversified Lending Group, Inc., Equipment Acquisition Corp., Bank
17 United, and the Syntax-Brilliant cases, among many others, involving complex fraud,
18 Ponzi schemes, accounting, legal and other malpractice and bankruptcy related
19 claims for which I and/or Diamond McCarthy recovered tens of millions of dollars
20 for our clients. I was one of the lead lawyers on behalf of a trustee who brought a
21 series of large cases that grew out of the bankruptcy of Tri Valley Growers,
22 recovering more than \$34.5 million for the estate and unsecured creditors. On the eve
23 of trial, the estate of Tri Valley Growers settled accounting malpractice claims
24 against an accounting firm for more than \$10 million and recovered \$17.5 million in
25 a settlement against D&O insurers to resolve bad faith claims. Diamond McCarthy’s

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1 views and analysis regarding the case against the Deloitte Entities¹ are thus informed
2 by our expertise and experience in this area. It is particularly noteworthy, in my
3 judgment that our firm regularly litigates substantial cases on a contingent fee basis,
4 which requires an objective, thoughtful, informed analysis before responsibly
5 committing to the representation.

6 4. The below paragraphs reflect the truth as to my informed judgment and
7 belief regarding the strengths of the claims and defenses that could be advanced by
8 the Receiver and Party Investors against the Deloitte Entities and related issues.
9 While I am positive that the declaration truthfully conveys my considered judgments
10 and beliefs as to many issues, I am not asserting that the conclusions are necessarily
11 correct.

12 5. On behalf of the Receiver, Diamond McCarthy invested a great deal of
13 time and effort in analyzing the claims and defenses, and participating in the lengthy
14 settlement process that culminated in a settlement with the Deloitte Entities.
15 Engagement in this settlement process presented substantial risk for the Receiver as
16 to the outcome, as opposed to commencing litigation. Discussions with the Deloitte
17 Entities' in-house counsel about a settlement process began in the spring of 2020 and
18 continued with their retained counsel into August of 2020 when the settlement
19 process was formalized. We began having weekly calls with the Deloitte Entities'
20 counsel as part of the process around June of 2020, and rarely skipped a week. The
21 Receiver was very involved throughout the efforts and our litigation team regularly
22 had in-depth thoughtful discussions (and at times debates) with the Receiver. The
23 Receiver in my view studied the issues closely and I valued a great deal his feedback
24 and attention.

25 _____
26 ¹ Capitalized terms not defined in this declaration have the same meaning as in the
27 Amended Settlement Agreement.

1 6. The Party Investors became active participants early in this process as
2 well. Indeed, David Azar’s firm filed its class action complaint before the
3 Receivership Order was entered, though the action was stayed. We had regular
4 communications with Mr. Azar and Larry Eagel in the early part of the receivership.
5 Jason Kellogg, counsel for the Century Group of investors, and his colleagues,
6 collaborated regularly with our litigation team. Just as we began regular calls to
7 explore the mediation process on a weekly basis in or about April of 2020, by the fall
8 of 2020 we normally had weekly calls that continued through the mediation. By the
9 time that the Jackson Group filed their complaint against the Deloitte Entities, in
10 June of 2020, counsel, Michael Paris, was actively involved and had done substantial
11 work. Mr. Paris and his firm had thoughtful and considered viewpoints in my
12 judgment. As the discussions with the Deloitte Entities regarding a settlement
13 process coalesced, we correspondingly increased our efforts to working
14 cooperatively with the lawyers for the Party Investors with the goal of mediation
15 with the Deloitte Entities by the end of 2020. The Party Investors represented by
16 counsel and the Receiver and his team, though, understood well that there were areas
17 where their views may differ and each represented claims on behalf of the DLI
18 Receivership Entities both distinguishable from investor claims and in many respects
19 similar with regard to certain elements, such as whether or not the Deloitte Entities
20 were professionally negligent.

21 7. The Settlement with the Deloitte Entities was achieved after a
22 meaningful exchange of information between the parties over a period of many
23 months. During the process, the Party Investors’ counsel became very much involved
24 as well. Most of these exchanges were made pursuant to a protective order and a
25 non-use/non-waiver and confidentiality agreement. The Deloitte Entities provided
26 the Receiver with the workpapers for the audits and other documents, including e-
27 mails. These workpapers were also shared with counsel for the Party Investors. The
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1 Receiver gave the Deloitte Entities material on certain investments and related to
2 DLI, and other documents, including e-mail. Overall, the Receiver produced more
3 than 168,000 pages of documents as part of this information exchange. The Receiver
4 utilized a confidential, undisclosed consulting expert’s presentation and analysis,
5 either prepared solely for purposes of mediation, or reflecting confidential attorney
6 work product and/or AIC communications, as an important part of the settlement
7 process.

8 8. This Settlement, now reflected in the Amended Settlement Agreement,
9 includes both the claims of the Receiver against the Deloitte Entities on behalf of the
10 receivership estate, and the claims of the Party Investors, who maintain that they
11 were damaged by misrepresentations contained in the Deloitte & Touche, LLP
12 (“Deloitte”) audit opinions. While the Settlement reflects the strengths of these
13 claims, particularly in my view as to liability (subject to the *in pari delicto* defense),
14 there is significant litigation risk of pursuing these claims against Deloitte.

15 9. Deloitte’s actions give rise to several legal theories that provide avenues
16 for potential recovery by the Receiver. If litigated, these theories will rest on
17 resolution of disputed and often complex issues of fact and law. As described below,
18 the facts and law illustrate the relative strengths and possible weaknesses of the
19 Receiver’s and the Party Investors’ claims and, in my judgment, strongly support the
20 Receiver’s business judgment that the settlement is fair, reasonable, and adequate.
21 Deloitte contests each allegation of wrongdoing asserted by the Receiver and would
22 advance those arguments in any litigation with vigor and represented by extremely
23 effective and capable counsel.

24 10. The Receiver has claims for professional negligence against Deloitte.
25 The \$31 million settlement against this third-party service provider represents a
26 substantial recovery for the estate, in relation to the damages attributable to Deloitte’s
27 conduct, and the risks and expense of litigation. The Settlement places a significant
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1 amount of money in line for distribution to Investors in the short term.

2 11. Deloitte was the auditor for the Funds during their most pronounced
3 period of growth, following the formation of the master/feeder fund structure in
4 2016. Deloitte was successor auditor to EisnerAmper LLP. DLI retained Deloitte to
5 perform independent audits of DLIF for the years ended December 31, 2016 and
6 2017, and of DLIFF and DLI Capital, Inc. (together with DLIF, collectively, the
7 “Funds”) for the period from October 1, 2016 to December 31, 2016 and the year
8 ended December 31, 2017, and to issue written audit opinions about the fair
9 presentation of the 2016 and 2017 financial statements and related notes to the
10 financial statements.

11 12. Under the applicable auditing standards, belief and judgment Deloitte
12 had a duty to:

13 (a) obtain sufficient appropriate audit evidence to enable it to be able
14 to draw reasonable conclusions on which to base Deloitte’s audit opinions.
15 AICPA AU-C § 500; understand DLI and the Funds, including evaluating the
16 consistency of the application of accounting principles. AICPA AU-C §
315.12 and 510.04;

17 (b) plan and perform audit procedures sufficient to obtain
18 “reasonable assurance” about whether the Funds’ 2016 and 2017 financial
19 statements were free from material misstatements. AICPA, AU-C § 200.06;

20 (c) plan and perform the audit with professional skepticism,
21 recognizing that circumstances may exist, including fraud, that may cause
22 financial statements to be materially misstated. AICPA, AU-C § 200.17;

23 (d) assess, identify and respond to risks of material misstatement at
24 both the financial statement and assertion level. AICPA, AU-C §§ 315 and
330, 330.05 and 06;

25 (e) “design and perform audit procedures to [...] review accounting
26 estimates for biases and evaluate whether the circumstances producing the
27 bias, if any, represent a risk of material misstatement due to fraud.” AICPA,
28 AU-C § 240.32;

1 (f) determine whether the Funds’ asserted fair value of its
2 investments complied with Accounting Standards Codification (“ASC”), ASC
3 820. AICPA, AU-C § 540.12;

4 (g) evaluate whether substantial doubt existed about the Funds’
5 abilities to continue as going concerns. AICPA, AU-C § 570.03; and

6 (h) perform audit procedures designed to obtain sufficient appropriate
7 audit evidence that all subsequent events that require adjustment of, or
8 disclosure in, the financial statements have been identified. AICPA, AU-C §
9 560.09.

10 13. We may be able to prove that, despite issuing unqualified audit opinions
11 for these pivotal periods of DLI’s exponential growth, Deloitte’s audit work failed to
12 conform to Generally Accepted Auditing Standards (“GAAS”) with respect to the
13 auditing and testing of the valuation of the assets, among other failures, resulting in
14 Deloitte failing to identify that the Funds’ financial statements were materially
15 overstated and not presented fairly in accordance with Generally Accepted
16 Accounting Principles (“GAAP”). These issues are difficult to present to a trier of
17 fact and the outcome is inherently unpredictable.

18 14. From the start of the engagement, the evidence reflects that Deloitte
19 knew the Funds’ investments were Level 3 assets which elevated the risk of
20 overvaluation. Throughout its engagement, the Receiver believes the evidence will
21 show that Deloitte repeatedly accepted what DLI and Brendan Ross told Deloitte at
22 face value, rather than exercising professional skepticism in accordance with GAAS
23 and questioning the representations and assumptions of management as necessary to
24 obtain reasonable assurances that the financial statements were free from material
25 misstatement. This was especially true where the key aspect of the Funds’ assets was
26 concerned: the value of the investments. While expressly noting the significant risk
27 of material overvaluation of the Funds’ Level 3 assets in planning documents in its
28 workpapers, and the likelihood that management could override internal controls,

1 Deloitte failed to obtain sufficient audit evidence to identify what amounted to
2 materially overstated valuations and earnings. The workpapers reflect, for example,
3 that Deloitte used discount rates and default rate assumptions that the Receiver
4 asserts failed to equate with the realities of the investments and underlying
5 contractual terms. These overly optimistic assumptions inflated the value of the
6 portfolio. Deloitte's failure to detect and report non-GAAP valuations and
7 underlying assumptions could be shown to have damaged the Funds because the
8 gross overvaluations of certain of the managed assets required DLI to fund payment
9 of excessive management and performance fees, certain out-of-pocket expenses, and
10 excess redemptions.

11 15. The Receiver contends there is evidence that Deloitte failed to respond
12 to significant internal control weaknesses which continued into 2018 and early 2019,
13 perpetuating continued overvalued assets. This led to continued payment of
14 excessive management and performance fees to DLI, certain out of pocket expenses,
15 and of excess redemptions.

16 16. We would hope to prove that Deloitte also engaged in audit malpractice
17 in failing to adequately plan its audits to respond to the fraud and other related audit
18 risks it identified, including the lack of effective internal controls and the related risk
19 of management override of the receivership entities' controls.

20 17. The Receiver also has a claim for breach of contract under similar facts.
21 Deloitte failed to perform its audits in accordance with GAAS. If Deloitte had
22 complied with its contractual duties the DLI Receivership Entities would not have
23 suffered substantial damages. The evidence arguably could develop to show that
24 Deloitte aided and abetted a breach of fiduciary duty.

25 18. As stated above, the Receiver has claims against Deloitte, based on the
26 Receiver's extensive investigation and the work of counsel in evaluating those
27 claims. The Receiver's settlement of these claims recognizes the risks inherent in
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1 litigation, the costs and delays of litigation, and the defenses available to Deloitte.
2 My team and I diligently evaluated those defenses and worked with the Receiver to
3 assess their importance as part of the settlement process.

4 19. One of Deloitte’s central defenses to the Receiver’s claims will be the
5 doctrine of *in pari delicto*. Although the Ninth Circuit has deemed this defense
6 inapplicable to a court-appointed receiver, because New York law may very well
7 apply to the Receiver’s claims against Deloitte, Deloitte would rely on this defense to
8 preclude the Receiver from recovering against Deloitte. Deloitte will argue that *in*
9 *pari delicto* will apply because DLI, through its culpable corporate officers,
10 intentionally participated in creating and employing the alleged incorrect audit
11 opinion by, amongst other things, providing inaccurate financial statements to the
12 auditors and concealing the fraud. Under New York law, the defense rests on the
13 theory of agency, imputing the bad actors’ conduct to the company and “mandat[ing]
14 that the courts will not intercede to resolve a dispute between two wrongdoers.”
15 *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 464 (2010).

16 20. Legal and, therefore, settlement risk analysis of *in pari delicto* involves
17 a complex series of exceptions. The corporate officers’ actions, such as the misdeeds
18 of Ross, would typically be imputed to the receivership entities for purposes of *in*
19 *pari delicto*. To avoid its application, the Receiver will likely have to convince the
20 court or arbitrator that the “adverse interest” exception applies. This exception
21 applies where the agent, such as Ross, has “totally abandoned his principal’s interests
22 and [is] acting entirely for his own or another’s purposes. It cannot be invoked
23 merely because he has a conflict of interest or because his is not acting primarily for
24 his principal.” *Ctr. v. Hampton Affiliates, Inc.*, 66 N.Y.2d 782, 785 (1985). Deloitte
25 will argue the adverse interest exception does not apply because the audits provided
26 the entities a benefit which permitted the Funds to continue their operations. *See In*
27 *re Platinum-Beechwood Litig.*, 427 F.Supp.3d 395, 446 (S.D.N.Y 2019). Deloitte
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1 will maintain that the Funds benefited from the overvaluation of their assets, which
2 permitted them to attract additional investors.

3 21. But some recent decisions have found “the mere continuation of a
4 corporate entity does not per se constitute a benefit that precludes application of the
5 adverse interest exception.” *Simon Conway, et al. v. Marcum & Kliegman LLP*, 176
6 A.D.3d 477, 477-478 (N.Y. App. Div., 1st Dep’t 2019). The court rejected prior,
7 unreasonably narrow interpretations of the adverse interest exception. It rejected the
8 argument that the hedge funds’ continued survival for two years after the audit was a
9 sufficient benefit to defeat the adverse interest exception and recognized that “an
10 ongoing fraud and a continued corporate existence may harm a corporate entity” by
11 permitting the agent to continue to loot it. The Second Circuit has also permitted
12 particular schemes or transactions to be segregated such that certain schemes will be
13 deemed to have inured to the benefit of the corporation, while others did not. *See In*
14 *re Bennett Funding Group, Inc.*, 336 F.3d 94, 100 (2d Cir. 2003). Because there were
15 numerous investments in the Funds, the Receiver can parse the particular
16 investments to defeat the defense. Deloitte will also argue that the adverse interest
17 exception does not apply because Ross was the sole decision maker of the principal,
18 the sole actor exception. The Receiver has viable arguments here as well based on
19 the “innocent insider” exception. This exception turns on whether other innocent
20 persons “inside the corporation had the power to stop the fraud.” *In re Arbco Capital*
21 *Mgmt., LLP*, 498 B.R. 48 (E. D. Bankr. 2013). Whether this exception applies will
22 rest on disputed facts as to whether there were innocent insiders at DLI that had
23 actual authority to stop the fraud. *Cobalt Multifamily Investors I, LLC v. Shapiro*,
24 2009 WL 2058530, at *8 (S.D.N.Y. July 15, 2009).

25 22. Deloitte will likely challenge causation, including proximate cause.
26 Causation presents complex factual issues, including the effect of intervening events
27 on the chain of causation. Here, we expect Deloitte will argue that the Receiver
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1 cannot show that DLI would have liquidated earlier had Deloitte identified the
2 incorrect valuations and reported them to management and that DLI had in other
3 circumstances extended and renegotiated other bad investments. Deloitte will
4 challenge the Receiver's calculation of the overvaluation of specific investments and
5 any attempt by the Receiver to demonstrate portfolio-wide overvaluation. Deloitte
6 may also maintain that Ross's intervening conduct was not foreseeable, and that
7 other, superseding, events will cut off causation. However, intervening acts such as
8 this do not automatically sever the causation connection where the risk of the
9 intervening act is the same risk which renders the actor negligent. The complex
10 issues related to causation create litigation risk for both sides.

11 23. The Receiver, in furtherance of his duties, and in conjunction with his
12 investigation of potential claims against Deloitte, investigated the magnitude and
13 nature of damages caused by Deloitte's actions. The Receiver, with the assistance of
14 his professionals and counsel, evaluated multiple potential theories of damages,
15 including theories arising from the following: (i) payments to the Deloitte Entities
16 for audit services; (ii) performance fees and management fees paid by the Master
17 Fund to DLI; (iii) investor redemptions; (iv) out of pocket losses; and (v)
18 administrative and custody fees. In each case, the Receiver's investigation revealed
19 that the Funds had suffered significant losses and that such losses could be, certainly
20 in part, attributable to Deloitte's actions.

21 24. The Funds paid the Deloitte Entities \$1.71 million for audit services.

22 25. The Master Fund will claim it suffered numerous categories of damages
23 from the overvaluation of its investments. First, the Master Fund paid management
24 and performance fees to DLI based on the Master Fund's Net Asset Values ("NAV").
25 If Deloitte's audit negligence inflated the NAV, the Master Fund paid excess
26 management fees from May 2017 to March 2019, with the precise amount a function
27 of the degree of overvaluation. In addition, correct valuations may have eliminated,
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1 or reduced performance fees paid to DLI. DLIC paid more than \$14.5 million in
2 management fees and more than \$29 million in performance fees from the first
3 Deloitte audit report until the Receivership.² The potential range of such damages
4 provable at trial could require proof of the overvaluation of each asset at various
5 points in time and a recalculation of the correct fees. In the Receiver's Report filed
6 November 20, 2020 (Dkt. No. 320), the Receiver prepared an overvaluation analysis
7 utilizing a conservative methodology that would require supplementation for
8 litigation with an investment-by-investment valuation. Receiver's Report pp. 65-67
9 & n.91. Despite the limited and conservative nature of the analysis, it provides data
10 useful for evaluating and judging the reasonableness of a settlement. The Report
11 reflects overvaluation of the DLI portfolio of 21.1% as of year end 2016, rising to
12 43.8% by year end 2017. A 21.1% overpayment of management fees is \$3.05
13 million, and a \$6.12 million overpayment of performance fees.

14 26. DLI also made substantial, excessive investor redemptions and
15 distributions. Investors that received redemptions or distributions between April 26,
16 2017 and February, 2019 should have received less because the correct value of their
17 investment in DLI was far lower than the reported value. In total DLI transferred
18 \$668 million to investors as redemptions or distributions during this period. Applying
19 a 21.1% overvaluation to DLI's redemptions and distributions during this period
20 yields excess redemption losses of approximately \$141 million.

21 27. After Deloitte's audit, DLI continued to send additional funds to high
22 risk, overvalued investments. DLI advanced almost \$44 million in cash, net of later
23 repayments, to five overvalued investments between May 2017 and March 2019. The
24 Receiver's Report (Doc. No. 320) at p. 67 reflects that these were some of DLI's
25 worst investments.

26 _____
27 ² All numbers are rounded to a reasonable degree for simplicity.

1 28. DLI paid NAV-based vendor fees, consisting of \$848,487 paid for
2 administration fees and \$755,920 paid for custody fees. Corrected valuations would
3 have reduced these fees similar to the losses above.

4 29. Deloitte will oppose the Receiver's calculation of damages, including
5 any overvaluation percentage offered on either a portfolio or individual basis as well
6 as the underlying claim that it overvalued such investments. Deloitte is expected to
7 assert defenses of comparative fault and attribute responsibility for the Funds's
8 injuries on its directors and officers, *e.g.* Ross, and the other professional advisers
9 that provided financial services to the DLI Receivership Entities. Deloitte will also
10 argue that it is entitled to offsets for additional investments received by DLI, other
11 recoveries pre and post receivership, and that DLI and the receivership estate have
12 failed to mitigate damages.

13 30. The investors also contend that Deloitte failed to meet its professional
14 standard of care in performing its audits of DLI Entities and that the audit report
15 contained misrepresentations. They contend that the Investors would not have
16 invested with DLI, and would have sought to redeem existing investments absent
17 such misrepresentations. Accordingly, they claim tens of millions of dollars in
18 damages as a result of their contention that Deloitte's conduct was improper.

19 31. Although the investor claims do not share the same *in pari delicto* risk
20 as the Receiver's claims, there is significant litigation risk for the Party Investors
21 with respect to their ability to show reliance on Deloitte's audit opinions. Because the
22 Party Investors will likely have to show actual and justifiable reliance on false
23 representations in the audit opinions, there is a risk that many Investors (who did not
24 review the audit opinions) will be unable to establish reliance. Further, to the extent
25 that Investors may have invested through a registered investment advisor who may
26 have reviewed the audit opinions, in order to establish indirect reliance, the Party
27 Investors will still likely have to prove that the substance of the audit opinions was
28

1 communicated to them and that they in turn relied on it.

2 32. With respect to those Investors with “holder claims” who claim to have
3 been induced to hold their investments in reliance on the Deloitte audit opinions,
4 Deloitte is anticipated to argue that they cannot prove any action taken in reliance on
5 the misrepresentations. In our judgment, those present substantial risk.

6 33. The Party Investors’ claims for aiding and abetting breach of fiduciary
7 duty and intentional misrepresentation share similar litigation risks as those
8 presented by analogous claims advanced by the Receiver. With respect to their claim
9 of aiding and abetting breach of fiduciary duty, the Party Investors likely will have to
10 prove Deloitte knew of and substantially assisted the breach.

11 34. Deloitte will raise viable defenses to the Party Investors’ damage claims
12 and argue that out-of-pocket damages should be limited to the Deloitte audit period.
13 Further, Deloitte will argue that the Party Investors’ damages should be reduced by
14 the Receiver’s recovery, and by the Party Investors’ comparative fault based on their
15 knowledge of Ross’s personal investments in counterparties or knowledge of Ross’s
16 fraud.

17 35. If the Receiver was to prevail at trial, he is not likely to have difficulty
18 in collecting the judgment. However, the issue is time. No doubt, the Deloitte
19 Entities will put up a spirited defense, which will delay recovery and consequently
20 distributions. Second, should the Receiver prevail at trial, the Deloitte Entities are
21 likely to appeal, which will undoubtedly cause additional delays.

22 36. The foregoing lends support for the Receiver’s informed business
23 judgment that the terms of the Amended Settlement Agreement are fair, reasonable,
24 and adequate, in light of the relative strengths and weaknesses of the claims and
25 defenses, and that the Settlement provides sizeable recovery for the benefit of the
26 estate and holders of allowed claims.

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10 *Permanent Receiver*

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

**NOTICE OF HEARING ON
AMENDED MOTION OF RECEIVER
FOR (1) APPROVAL OF
SETTLEMENT WITH DELOITTE
ENTITIES; (2) ENTRY OF
SCHEDULING ORDER; AND (3)
ENTRY OF ORDER APPROVING
SETTLEMENT**

21 Date: July 25, 2022

22 Time: 1:30 p.m.

23 Dept.: Courtroom 7D

24 Place: United States District Court

Western Division

350 West 1st Street

Los Angeles, CA 90012

1 PLEASE TAKE NOTICE THAT on July 25, 2022 at 1:30 p.m. in Courtroom
2 7D of the above-entitled Court, located at 350 West 1st Street, Los Angeles, CA
3 92701-4516, a hearing will be held on Bradley D. Sharp, the Court-appointed
4 permanent receiver’s (“Receiver”) Amended Motion for Approval of Settlement with
5 Deloitte Entities; Entry of Scheduling Order; and Entry of Order Approving Settlement
6 (“Amended Motion”).

7 The Amended Motion concerns a proposed settlement among and between, on
8 the one hand, (a) the Receiver for the estate of Direct Lending Investments, LLC,
9 Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI
10 Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (collectively, “DLI
11 Receivership Entities”); (b) Bradley D. Sharp and Christopher D. Johnson, in their
12 capacities as Joint Official Liquidators (“JOLs”) of Direct Lending Income Feeder
13 Fund, Ltd. (in official liquidation) (“DLIFF”) (DLIFF, together with the DLI
14 Receivership Entities, “DLI Entities”); (c) investors in the DLI Entities (“Investors”)
15 that participated in the mediation and identified in Exhibit “A” to the Amended
16 Confidential Settlement Agreement and Release (“Party Investors”) (specifically,
17 those Investors represented by The Meade Firm P.C., Reiser Law P.C., and Levine
18 Kellogg Lehman Schneider + Grossman LLP, those Investors that are plaintiffs in the
19 action *Jackson v. Deloitte & Touche LLP*, Case No. 20GDCV00419 (Ca. Super. Ct.)
20 and represented by Nystrom Beckman & Paris LLP, those Investors represented by
21 Bragar, Eigel & Squire PC, and those Investors that are putative lead plaintiffs in the
22 action *Marcia Kosstrin Trust and Professional Home Improvements, Inc. Retirement*
23 *Plan v. Direct Lending Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.)
24 and represented by putative class counsel Ahdoot and Wolfson PC and Milberg
25 Phillips Grossman LLP); and, on the other hand, (d) Deloitte & Touche, LLP, Deloitte
26 Tax LLP, and Deloitte & Touche Cayman Islands (collectively, the “Deloitte
27 Entities”). The Receiver, JOLs, the DLI Entities, the Party Investors and the Deloitte

1 Entities are referred to as the “Parties.”

2 On April 8, 2021, the Receiver filed the Motion for (i) Approval of Settlement
3 Agreement with Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of
4 Bar Order (Dkt. No. 532) (“Previous Motion”). On June 14, 2021, the Court held a
5 hearing on the Previous Motion. At the hearing, the Court directed certain questions
6 to the Parties and requested “supplemental briefing as discussed on the record.” (Dkt.
7 No. 646). Since then, the Parties have worked diligently over many months to respond
8 to the Court and have substantially modified the settlement. The terms of the modified
9 settlement are contained in the Amended Confidential Settlement Agreement and
10 Release (“Amended Settlement Agreement”) attached as Exhibit 1 to the Declaration
11 of Bradley D. Sharp in support of the Amended Motion.

12 By this Amended Motion, the Receiver seeks an order for the following relief:

13 First, the Receiver requests that the Court find that notice of the hearing on the
14 Amended Motion scheduled for July 25, 2022, be deemed adequate.

15 Second, that the Court enter an order substantially in the form of Exhibit “B” to
16 the Amended Settlement Agreement (“Scheduling Order”). The Scheduling Order
17 preliminarily approves the Settlement, establishes the form and content of the notices,
18 method and manner of service and publication, sets a hearing to consider the final
19 approval of the Amended Settlement Agreement, and provides an opportunity for
20 objections and participation in the final approval hearing.

21 Third, the Receiver requests that, after the procedures delineated in the
22 Scheduling Order have been met, the Court enter an order substantially in the form
23 and substance as Exhibit “E” to the Amended Settlement Agreement (“Order
24 Approving Settlement”). The Order Approving Settlement Agreement will serve as
25 the Court’s final order approving the Amended Settlement Agreement.

1 The material terms of the Amended Settlement Agreement are summarized
2 below. The complete terms of the Settlement are detailed in the Amended Settlement
3 Agreement.

- 4 1. Settlement Amount. The Deloitte Entities agree to pay the total sum of
5 thirty-one million dollars (\$31,000,000) (“Settlement Amount”). Amended
6 Settlement Agreement, § 2.1.
- 7 2. Grand Court Sanction. The JOLs are to make an application to the Grand
8 Court of the Cayman Islands seeking an order holding that the JOLs have
9 sanction to enter into the Amended Settlement Agreement without
10 modification (other than immaterial modifications with materiality to be
11 agreed between the JOLs and the Deloitte Entities), and to take all necessary
12 steps to consummate the Settlement (“Sanction Order”). Within seven (7)
13 days after the Execution Date, the JOLs shall make an application by way
14 of an interlocutory summons to the Grand Court requesting the Grand Court
15 to make the Sanction Order (“Summons”). Amended Settlement
16 Agreement, § 2.2.
- 17 3. Approval by this Court. The Receiver is to seek approval from this Court of
18 the terms of the Amended Settlement Agreement in their entirety without
19 modification, and the entry of the Order Approving Settlement, with no
20 modification (other than immaterial modifications, with materiality to be
21 determined by the Deloitte Entities in their good-faith discretion). Amended
22 Settlement Agreement, § 2.3.

23 Within one day after the JOLs have filed the Summons, the Receiver is to
24 file the Amended Motion requesting entry of an order substantially in the
25 form as the Scheduling Order. This Amended Motion will be noticed for a
26 hearing to be held at least sixty (60) days after the Amended Motion is filed
27 to allow for the Sanction Order to be entered. In the event the Sanction Order
28 is not entered by the hearing date on the Amended Approval Motion, the
Receiver shall request this Court to postpone the hearing to allow for the
Grand Court to issue a decision on the Summons. If the Grand Court does
not enter the Sanction Order or such order does not become Final, the
Receiver is to withdraw the Amended Motion. Amended Settlement
Agreement, §§ 2.3(a)(i), (vi).

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4. All Parties Right to Withdraw. If this Court does not enter the Order Approving Settlement, or such order does not become Final, any Party shall have the right to withdraw by providing thirty (30) days written notice of withdrawal to the other Parties. In the event this Court does provide the approval and enters the Order Approving Settlement, or such order does become Final, within any thirty (30) day withdrawal notice period, such notice of withdrawal shall become ineffective. Amended Settlement Agreement, § 2.5(a).

If the Grand Court does not enter the Sanction Order within sixty (60) days from the day on which the JOLs file the Summons or if the Summons is not submitted within seven (7) days after the Execution Date as required in provided in § 2.2(a)(i) of the Amended Settlement Agreement, any Party has the right to withdraw by providing thirty (30) days written notice of withdrawal to the other Parties. In the event the Grand Court enters the Sanction Order within any thirty (30) day withdrawal notice period, such notice of withdrawal shall become ineffective. Amended Settlement Agreement, § 2.5(b).

5. Opt Out Rights. The Amended Settlement Agreement allows for Investors to exclude themselves from the Settlement pursuant to the procedures described in Exhibits H and I to the Amended Settlement Agreement (“Opt Out Notices”). Those Investors that exclude themselves from the Settlement through the required procedures are referred to as “Opt-out Investors.” Investors that do not exclude themselves from the Settlement through the required procedures are referred to as “Participating Investors.” “Participating DLIF Investors” means DLIF Investors that are also Participating Investors and “Participating DLIFF Investors” means DLIFF Investors that are also Participating Investors. Amended Settlement Agreement, §§ 1.16-1.20.

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. Amended Settlement Agreement. Amended Settlement Agreement, § 2.9.

6. Deloitte Entities Right to Withdraw. In the event that the Opt-out Investors exceed a certain threshold agreed upon by the Parties to the Settlement, the Deloitte Entities have the sole right to withdraw from the Settlement.

1 Simultaneously with the Amended Approval Motion, counsel for the Parties
2 have executed a confidential Supplemental Agreement Regarding Requests
3 for Exclusion (“Supplemental Agreement”). Amended Settlement
4 Agreement, § 2.6.

- 5 7. Releasing Claimant and Participating DLIF Investors’ Release of Released
6 Deloitte Entities. Each Releasing Claimant and each Participating DLIF
7 Investor, shall fully, finally, and forever release, covenant not to sue, and
8 discharge each of the Released Deloitte Entities from any and all Released
9 Claims held by, on behalf of, for the benefit of, or in the name of the
10 Releasing Claimant. Amended Settlement Agreement, §§1.20, 4.1(a).
11 Each Releasing Claimant and Participating DLIF Investor, for good and
12 valuable consideration, shall not to cause, authorize, voluntarily assist, or
13 cooperate in, or induce any Third Party to pursue the commencement,
14 maintenance, or prosecution of any action or proceeding (whether in the
15 United States, the Cayman Islands, or elsewhere) relating to or arising from
16 any Released Claims against any of the Released Deloitte Entities. This
17 provision does not restrict a Releasing Claimant or Participating DLIF
18 Investor from testifying truthfully if subpoenaed as a witness. Amended
19 Settlement Agreement, § 4.1(c).
- 20 8. Bar Order. Each Releasing Claimant and each Participating Investor shall
21 forever be barred and enjoined from prosecuting against any of the Released
22 Deloitte Entities, now or at any time in the future, any action, lawsuit, cause
23 of action, claim, investigation, demand, complaint, or proceeding of any
24 nature, including but not limited to litigation, arbitration, or other
25 proceeding, in any state or federal court, arbitration proceeding, or other
26 forum in the United States that relates to, is based upon, arises from, or is
27 connected with the professional services provided by the Deloitte Entities
28 to the DLI Entities. Amended Settlement Agreement, § 4.1(b).
9. Proportionate Fault Reduction. Any final verdict or judgment obtained by
or on behalf of any Claimant or Participating DLIF Investor against any
Third Party shall be reduced by an amount that corresponds to the
percentage of responsibility of the Released Deloitte Entities for common
damages. However, where the law governing such final verdict or judgment
 (“Other Governing Law”) requires a reduction in a different amount, the
final verdict or judgment shall be reduced by an amount as provided by such
Other Governing Law. Amended Settlement Agreement, § 4.1(d).

1 The Amended Motion is made following the Receiver’s communications with
2 counsel for the Securities and Exchange Commission under Local Rule 7-3, and the
3 Receiver is advised that the SEC generally does not oppose the Amended Approval
4 Motion. A judgment of liability has been entered against the sole defendant Direct
5 Lending Investments, LLC, which is under the supervision and control of the Receiver,
6 making a conference with that entity unnecessary. The Receiver has also
7 communicated with Chris Johnson, one of the Joint Official Liquidators over the Off
8 Shore Feeder Fund, who has indicated he does not oppose the relief sought. There are
9 numerous interested parties served with the Amended Motion, making a pre-filing
10 conference with the other interested parties impracticable.

11 This Amended Motion is based upon this Notice of Hearing, the separately filed
12 notice of motion, the Memorandum of Points and Authorities, the concurrently filed
13 Declarations of Bradley D. Sharp and Christopher D. Sullivan, and upon such further
14 oral argument, testimony and evidence as may be received at the hearing on this matter.

15 PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7-9, any party
16 who opposes the Amended Approval Motion must, not later than 21 days before the
17 date of the hearing on the Amended Approval Motion, serve upon all other parties and
18 file with the Clerk either (a) the evidence upon which the opposing party will rely in
19 opposition to the motion and a brief but complete memorandum which shall contain a
20 statement of all the reasons in opposition thereto and the points and authorities upon
21 which the opposing party will rely, or (b) a written statement that that party will not
22 oppose the motion. Evidence presented in all opposing papers shall comply with the
23 requirements of L.R. 7-6, 7-7 and 7-8.

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DATED: May 24, 2022

DIAMOND McCARTHY LLP

By: /s/ Christopher D. Sullivan

Christopher D. Sullivan

Counsel for Bradley D. Sharp, Permanent

Receiver

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS,
LLC,

Defendant.

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

**[PROPOSED]
SCHEDULING ORDER**

This matter is before the Court on the Amended Motion for (i) Approval of Settlement Agreement with the Deloitte Entities; (ii) Entry of Scheduling Order; and (iii) Entry of Order Approving Settlement (“**Amended Approval Motion**”) filed by the Receiver. Following a hearing held on June 14, 2021 on a prior motion for approval, the Parties subsequently modified the Settlement and filed a Joint Status Conference Statement, noting for the Court the relevant changes that were made to the Settlement. The terms of the modified Settlement are contained in the Amended

1 Confidential Settlement Agreement and Release submitted as Exhibit 1 to the
2 Declaration of Bradley D. Sharp accompanying the Amended Approval Motion
3 (**“Amended Settlement Agreement”**). The Amended Approval Motion and
4 supplemental documents concern the Amended Settlement Agreement among and
5 between, on the one hand, (a) Bradley D. Sharp, in his capacity as the Court-
6 appointed Receiver (the **“Receiver”**) for the estate of Direct Lending Investments,
7 LLC, Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd.,
8 DLI Capital, Inc., DLI Lending Agent, LLC, DLI Assets Bravo LLC (in
9 Receivership) (collectively, the **“DLI Receivership Entities”**); (b) Bradley D. Sharp
10 and Christopher D. Johnson, in their capacities as Joint Official Liquidators
11 (**“JOLs”**) of Direct Lending Income Feeder Fund, Ltd. (in official liquidation)
12 (**“DLIFF”**) (DLIFF, together with the DLI Receivership Entities, the **“DLI**
13 **Entities”**); (c) investors in the DLI Entities (**“Investors”**) that participated in the
14 Mediation and are identified in Exhibit A to the Amended Settlement Agreement
15 (**“Party Investors”**) (specifically, those Investors represented by The Meade Firm
16 P.C., Reiser Law P.C., and Levine Kellogg Lehman Schneider + Grossman LLP,
17 those Investors that are plaintiffs in the action *Jackson v. Deloitte & Touche, LLP*,
18 Case No. 20GDCV00419 (Ca. Super. Ct.) and represented by Nystrom Beckman &
19 Paris LLP, those Investors represented by Bragar Eagel & Squire, P.C., and those
20 Investors that are putative lead plaintiffs in the action *Marcia Kosstrin Trust and*
21 *Professional Home Improvements, Inc. Retirement Plan v. Direct Lending*
22 *Investments, LLC, et al.*, Case No. 2:19-cv-02452 (C.D. Cal.) and represented by
23 putative class counsel Ahdoot and Wolfson PC and Milberg Coleman Bryson
24 Phillips Grossman PLLC); and, on the other hand, (d) Deloitte & Touche, LLP,
25 Deloitte Tax LLP, and Deloitte & Touche LLP (Cayman Islands) (collectively, the
26 **“Deloitte Entities”**). Capitalized terms not otherwise defined in this order shall have
27 the meaning assigned to them in the Amended Settlement Agreement.

28

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

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

24 2. Final Approval Hearing: The Final Approval Hearing will be held
25 before the Honorable Dale S. Fischer of the United States District Court for the
26 Central District of California, First Street Courthouse, 350 West 1st Street, Los
27 Angeles, California 90012, in Courtroom 7D, at __:__ .m. on _____, 2022,
28 which is a date at least sixty (60) calendar days after entry of this Scheduling Order.

1 The purposes of the Final Approval Hearing will be to: (i) determine whether the
2 terms of the Amended Settlement Agreement should be finally approved by the
3 Court; (ii) determine whether the Order Approving Settlement attached as Exhibit E
4 to the Amended Settlement Agreement should be entered by the Court; (iii) rule
5 upon any objections to the Amended Settlement Agreement or the Order Approving
6 Settlement; and (v) rule upon such other matters as the Court may deem appropriate.

7 3. Notice: The Court approves the form of Notice of Settlement attached
8 as Exhibit C to the Amended Settlement Agreement, the Notices of Settlement and
9 Right of Exclusion from Settlement (the “**Opt-out Notices**”) attached as Exhibits H
10 and I to the Amended Settlement Agreement, and finds that the methodology,
11 distribution, and dissemination of these notices: (i) constitute the best practicable
12 notice; (ii) are reasonably calculated, under the circumstances, to apprise all Persons
13 who may have a Released Claim against the Released Deloitte Entities (specifically
14 the Interested Parties¹), of the Amended Settlement Agreement, and the releases
15 therein; (iii) are reasonably calculated, under the circumstances, to apprise all
16 Interested Parties of the right to object to the Amended Settlement Agreement and
17 the Order Approving Settlement, and the right of Investors to opt out of the
18 Settlement, and to appear at the Final Approval Hearing; (iv) constitute due,
19 adequate, and sufficient notice; (v) meet all requirements of applicable law,
20 including the Federal Rules of Civil Procedure, the United States Constitution
21 (including Due Process), and the Rules of the Court; and (vi) will provide to all
22 Persons a full and fair opportunity to be heard on these matters. The Court further
23 approves the form of the Publication Notice attached as Exhibit D to the Amended
24 Settlement Agreement. Therefore:

25 a. The Receiver is directed, no later than seven (7) calendar days
26

27 ¹ 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 after entry of this Scheduling Order, to cause the Notice of Settlement in
2 substantially the same form attached as Exhibit C to the Amended Settlement
3 Agreement to be sent via electronic mail, first class mail, or international delivery
4 service to all Interested Parties.

5 b. The Receiver is directed, no later than seven (7) calendar days
6 after entry of this Scheduling Order, to cause the appropriate Opt-out Notice(s) in
7 substantially the same form attached as Exhibit H or I to the Amended Settlement
8 Agreement to be sent via electronic mail, first class mail, or international delivery
9 service to all known Investors of DLI Entities.

10 c. The Receiver is directed, no later than seven (7) calendar days
11 after entry of this Scheduling Order, to cause the Publication Notice in substantially
12 the same form attached as Exhibit D to the Amended Settlement Agreement to be
13 published twice in the national edition of *The Wall Street Journal*, twice in the
14 international edition of *The New York Times*, and once in *The Los Angeles Times*.

15 d. The Receiver is directed, no later than seven (7) calendar days
16 after entry of this Scheduling Order, to cause the Amended Settlement Agreement,
17 the Amended Approval Motion and Joint Status Conference Statement, this
18 Scheduling Order, the Notice (Exhibit C to the Amended Settlement Agreement),
19 the Opt-out Notices (Exhibits H and I to the Amended Settlement Agreement) and
20 all exhibits and appendices attached to these documents, to be posted on the
21 Receiver's website (<http://case.stretto.com/dli>).

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

1 the circumstances of the request.

2 f. No less than ten (10) calendar days before the Final Approval
3 Hearing, the Receiver shall cause to be filed with the Clerk of this Court written
4 evidence of compliance with subparts (a) through (d) of this Paragraph, which may
5 be in the form of an affidavit or declaration.

6 4. Objections and Appearances at the Final Approval Hearing: Any
7 Person who wishes to object to the terms of the Amended Settlement Agreement or
8 the Order Approving Settlement, or who wishes to appear at the Final Approval
9 Hearing, must do so by emailing a written objection to TeamDLI@stretto.com, no
10 later than [insert date of 21st day before Final Approval Hearing], 2022. All
11 objections must:

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

14 b. contain the name, address, telephone number, and email address
15 of any attorney representing the Person filing the objection;

16 c. be signed by the Person filing the objection, or his or her
17 attorney;

18 d. state, in detail, the basis for any objection;

19 e. attach any document the Court should consider in ruling on the
20 Amended Settlement Agreement and the Order Approving Settlement; and

21 f. if the Person objecting wishes to appear at the Final Approval
22 Hearing, make a request to do so.

23 The Receiver is directed to compile all objections submitted into a single
24 pleading and file them with the Court.

25 Any Person submitting an objection shall be deemed to have submitted to the
26 jurisdiction of this Court for all purposes of that objection, the Amended Settlement
27 Agreement, and the Order Approving Settlement. Potential objectors who do not
28 present opposition by the time and in the manner set forth above shall be deemed to

1 have waived the right to object (including any right to appeal) and shall be forever
2 barred from raising such objections in this action or any other action or proceeding.
3 Persons do not need to appear at the Final Approval Hearing or take any other action
4 to indicate their approval. The Court may decline to permit anyone who fails to file
5 a written objection and request to appear at the Final Approval Hearing as set forth
6 in subparts (a) through (f) of this paragraph to appear at the Final Approval Hearing.
7 The Court will exercise discretion as to whether it wishes to hear from any Person
8 who fails to make a timely written objection and request to appear.

9 5. Responses to Objections: Any Party to the Amended Settlement
10 Agreement may respond to an objection filed pursuant to Paragraph 4 by filing a
11 response in the SEC Action no later than [insert date of 7th day before the Final
12 Approval Hearing]. To the extent any Person emailing an objection cannot be served
13 by action of the Court's CM/ECF system, a response must be served to the email
14 and/or mailing address provided by that Person.

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

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

1 Order.

2 **IT IS SO ORDERED.**

3 Signed on _____, 2022

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DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

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