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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

California Attorney Lending II, Inc.,

Plaintiff,

v.

Girardi & Keese, a California General
Partnership, and Thomas V. Girardi,
Individually,

Defendants.

Case No. 20STCP03546

CALIFORNIA ATTORNEY LENDING II, INC.'S *EX PARTE* APPLICATION FOR ORDER: (1) APPOINTING RECEIVER; (2) ISSUING PRELIMINARY INJUNCTION IN AID OF RECEIVER; AND (3) SETTING A HEARING TO SHOW CAUSE RE: CONFIRMATION OF APPOINTMENT OF RECEIVER AND PRELIMINARY INJUNCTION IN AID OF RECEIVER; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with the Declarations of Paul Cody, Brian Weiss, Kate L. Beneviste, and Marshall J. Hogan; the Request for Judicial Notice; Nomination of Receiver; and the Proposed Order]

Hearing Information

Date: December 7, 2020
Time: 8:30 a.m.
Dept: 15

FILED
Superior Court of California
County of Los Angeles

12/07/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Inostroza Deputy

1 Judgment creditor California Attorney Lending II, Inc. (“CAL II”) hereby applies *ex parte*
2 (Application) pursuant to California Code of Civil Procedure (“CCP”) sections 526, 527, 564(1),
3 (3), (4), (6), and (9), 708.620, and California Rules of Court Rule 3.1175-3.1184, for entry of the
4 order attached hereto as Exhibit 1 (“Order”) (i) appointing a receiver over judgment debtor
5 Girardi & Keese, a California general partnership (“G&K”), for the purpose of taking over
6 financial management and financial control of G&K, to take possession of its current and future
7 cash assets and payment intangibles, and to assume and pursue, as appropriate, its claims and
8 rights to payment; (ii) issuing a preliminary injunction against G&K and Thomas V. Girardi
9 (“Girardi,” together with G&K, the “Debtors”) in aid of the Receiver; and (iii) setting a show
10 cause hearing regarding confirmation of appointment of receiver and preliminary injunction in aid
11 of receiver. CAL II is *not seeking* for the receiver to exercise any control over, or interfere in any
12 way, with respect to matters relating to the Debtors’ legal practice or their legal representation of
13 clients and cases.

14 Specifically, CAL II seeks an Order setting forth the rights, duties and compensation
15 proposed for the receiver, requiring the Debtors to turnover to the receiver all bank accounts,
16 client trust accounts, property, keys, books, documents and records relating to the financial
17 matters of G&K and its financial operations, assigning all the Debtors’ rights to payment to the
18 receiver, liquidating assets of the Debtors, if necessary, and enjoining the Debtors from
19 interfering in any manner with the receiver’s discharge of his duties, collection of the Debtors’
20 accounts, disbursement of funds to CAL II and other creditors of Debtors, disposition of the
21 Debtors’ assets, as appropriate, as set forth in greater detail in the Order. CAL II nominates Brian
22 Weiss of Force Ten Partners, who has previously served as a receiver in a contingency fee law
23 firm, to serve as the receiver.

24 This Application is based on the following:

25 1. CAL II is a commercial lender, licensed under the laws of California, and makes
26 loans solely to attorneys who specialize in contingency fee litigation. The loans are made to the
27 law firms and are personally guaranteed by the law firm principal attorneys. They are also
28 secured by a first priority lien upon all assets of the law firm (perfected by the filing of a UCC-1

1 against the law firm and its principals/guarantors), including its right to receive payment from the
2 contingency fee cases existing on the date of the loan, as well as those acquired thereafter. This
3 lending arrangement is very similar to an accounts receivable lending arrangement at an hourly
4 practice firm and is payable, generally, over a period of years. Payment is *not* contingent on the
5 success of any of the cases and is an absolute obligation of the law firm and the
6 principal/guarantors.

7 2. Beginning in 2011, CAL II and G&K entered into credit arrangements for the
8 purpose of funding G&K’s law firm operations and was secured against, among other things,
9 G&K’s rights to payment for its representation of clients in various contingency fee cases. Girardi,
10 the principal partner of G&K, acted as guarantor of the loan and provided a non-exclusive list to
11 CAL II of all cases (“Case List”) in which G&K expected fees (“Expected Fees”). CAL II duly
12 filed a blanket UCC-1 against G&K. Throughout the years that followed, CAL II and Debtors
13 entered into several iterations of the credit arrangement in which Debtors increased the principal
14 amount of the debt to up to \$8 million. In recognition of CAL II’s continuing lien against the
15 G&K assets perfected retroactively to CAL II’s earliest UCC-1, Girardi intermittently updated the
16 G&K Case List to reflect new cases in which G&K had been retained and old cases which had
17 been settled or dismissed.

18 3. Unbeknownst to CAL II, between 2013 to 2018, Debtors incurred significant debt
19 and liabilities to third parties well above what they were able to pay. They began pledging CAL
20 II’s collateral, most importantly the same Expected Fees pledged to CAL II, to other creditors as
21 security for Debtors’ debts owed to such parties—without disclosure of CAL II’s first priority
22 lien rights in such collateral, without notice to CAL II, and in breach of the loan documents
23 entered into with CAL II (which precluded, among other things, further secured or unsecured
24 indebtedness and additional liens on the collateral). Wrongful pledges of CAL II’s collateral and
25 the Expected Fees include loans made by three different litigation companies in the amounts of \$
26 6.5M, 9.0M and \$17M. After defaulting on these loans and promises to pay, these creditors,
27 among others, began aggressively pursuing repayment and significant litigation ensued. Indeed,
28 one of them obtained a pre-judgment writ of attachment in connection with its litigation against

1 the Debtors attaching the Expected Fees in certain cases enumerated therein which constitute part
2 of CAL II's collateral.

3 4. Throughout this time, Debtors received significant proceeds from several cases
4 (which proceeds constitute CAL II's collateral) and diverted such proceeds to pay creditors other
5 than CAL II, including, upon information and belief, the \$17 million debt owed to one of the
6 litigation finance companies, or otherwise wasted them. Further, former clients of Debtors have
7 recently filed a stipulated judgment against Debtors in the principal amount of \$11,000,000. CAL
8 II has discovered that, in connection with that action, the Debtors have yet again—and for the
9 fourth time—pledged CAL II's collateral—including the Expected Fees, all without its
10 knowledge or consent. Due to their significant debt and liabilities, Debtors are not able to pay
11 their debts as they come due and were recently adjudged by the California Superior Court in a
12 related action by one of the litigation finance companies to be insolvent. Upon information and
13 belief, the Debtors have depleted all their working capital and are in desperate financial condition.

14 5. In the past two weeks, CAL II has learned that the Debtors have entered into
15 negotiations to transfer all or a portion of the collateral—including the Expected Fees—to another
16 law firm and is proceeding to close that transaction. Thus, it is probable that within weeks—or
17 even days—there will be little or no collateral or Expected Fees held by the Debtors.
18 Accordingly, *ex parte* relief is necessary.

19 6. Debtors also defaulted under the loan documents with CAL II by, among other
20 things, failing to make necessary payments under the loan. As a result, on or around October 27,
21 2020, after notice, CAL II obtained judgment against the Debtors pursuant to a confession of
22 judgment executed by Debtors in the sum of \$6,250,589.59, plus post-judgment interest and
23 reasonable attorneys' fees and costs incurred in collecting the judgment. The judgment also
24 provides for CAL II to have immediate possession of G&K's personal property.

25 7. Currently, Debtors stand to receive significant Estimated Fees in several settled
26 cases, and such payments are imminent. However, due to the enormity of litigation and
27 enforcement efforts being pursued against the Debtors and based on their track record of
28 surreptitiously transferring CAL II's collateral, it appears likely that Debtors will attempt to divert

1 such payments to other, junior creditors or otherwise dissipate them.

2 8. In addition, as Debtors' are forced to expend resources defending against the
3 litigation and enforcement efforts brought by their creditors and are prevented from maximizing
4 proceeds from their cases, there is a significant risk they will lose the confidence of their clients
5 and employees and lose valuable cases. This loss of confidence appears imminent, and once it
6 begins, Debtors are unlikely to recover and CAL II and creditors junior to it will be irreparably
7 harmed. *Ex parte* relief is necessary to prevent this potentially significant damage to G&K and its
8 ability to generate and collect attorneys' fees it is owed.

9 9. Under the circumstances, the prompt appointment of a receiver on an *ex parte*
10 basis is necessary to preserve CAL II's ability to maximize the value of G&K's cases that are still
11 pending and to recover all proceeds due to G&K (including the quantum meruit up to the point of
12 any substitutions). Further, appointment of a receiver is the most reasonable, fair, and orderly
13 manner of enforcing not only this Judgment, but other judgments obtained against the Debtors
14 and other security agreements entered into between the Debtors and other secured parties. CAL II
15 seeks only to appoint a receiver for reason of financial control over a law firm spinning out of
16 control and not for the purpose of interrupting or interfering in any way over the prosecution of
17 the firm's cases and its relationship with its clients.

18 Pursuant to California Rule of Court 3.1203, counsel for CAL II provided timely notice of
19 this Application to all parties. The names, addresses, and telephone numbers of Debtors as
20 follows (CAL II is not aware of Debtors being represented by counsel): Thomas V. Girardi, 1126
21 Wilshire Blvd., Los Angeles, CA 90017, (213) 977-0211, tgirardi@girardikeese.com.

22 Pursuant to California Rule of Court 3.1175, Paul Cody's declaration in support of this
23 Application ("Cody Decl.") sets forth: (1) The nature of the emergency and the reasons
24 irreparable injury would be suffered during the time necessary for a hearing on notice; (2) The
25 names, addresses, and telephone numbers of G&K's principal agents and managers; (3) The use
26 being made of G&K by its principal agents and managers; and (4) The nature and approximate
27 size or extent of G&K and facts sufficient to show whether the taking of G&K by a receiver
28 would stop or seriously interfere with the operation of the business.

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This Application is based upon the attached Memorandum of Points and Authorities, the attached Cody Decl., the Declarations of Marshall J. Hogan (“Hogan Decl.”), Brian Weiss (“Receiver Decl.”), and Kate L. Benveniste and the exhibits attached thereto, the Request for Judicial Notice (“RJN”), Notice of Related Cases, Nomination of Receiver, and the Proposed Order, and upon such further evidence as may be properly received by the Court at the hearing on this Application.

Dated: December 4, 2020

SNELL & WILMER L.L.P.

By: 
Clifford S. Davidson
Keith M. Gregory
Marshall J. Hogan

Attorneys for CALIFORNIA ATTORNEY LENDING II, INC.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Any day now, Debtors are expected to receive up to several millions of dollars for their
4 representation of plaintiffs in several contingency fee cases. Debtors pledged these proceeds to
5 CAL II as security for CAL II's \$8 million revolving loan dating back to 2011, which loan was in
6 default and has now been converted into an approximately \$6.5 million judgment against Debtors.
7 Based on Debtors' insolvency, their misrepresentations to CAL II and other creditors, and their
8 demonstrated habit of surreptitiously transferring CAL II's collateral (in violation of the loan
9 documents with CAL II) to whichever of their several creditors scream the loudest, the
10 appointment of a receiver on an *ex parte* basis is necessary to preserve these proceeds for
11 payment to CAL II and, once CAL II is paid in full, to other creditors. If a receiver is not
12 immediately appointed, based on Debtors' track record, these proceeds will be dissipated and
13 CAL II will be irreparably harmed.

14 Due to their insolvency, Debtors are now the subject of significant litigation and judgment
15 enforcement efforts by their creditors, which include lenders such as CAL II, service providers,
16 former clients, judgment creditors, and co-counsel. As they are forced to expend efforts and
17 resources litigating with their creditors, they cannot focus on maximizing the value of CAL II's
18 future collateral, which are proceeds of contingency fee cases still in progress. Debtors have lost
19 or are on the verge of losing the confidence of their clients, employees, co-counsel, and referral
20 sources. Once that confidence is lost, Debtors will suffer a downward spiral as they hemorrhage
21 clients, employees, referral sources, and ultimately cases and the prospect for revenue. The
22 immediate appointment of a receiver on an *ex parte* basis is necessary to preserve Debtors ability
23 to realize the value of their pending cases (which constitute CAL II's collateral) and litigate most
24 effectively on behalf of their clients. Under these circumstances, a receiver is not only a
25 reasonable method of satisfying CAL II's judgment, but may be the only method by which a
26 meaningful recovery can be obtained and also the sole means by which to protect the interests of
27 other creditors as well.

1 **II. STATEMENT OF FACTS**

2 **A. The Parties**

3 CAL II is an affiliate of Counsel Financial and are market leaders in the attorney lending
4 industry who have provided over \$1.5 billion in working capital credit lines and other innovative
5 financial products to the plaintiff's bar since 2000. (Cody Decl. ¶ 2.) CAL II provides loans solely
6 to law firms who specialize in contingency fee litigation, and such loans are personally
7 guaranteed by the law firm's principal attorneys and secured by a first priority upon all assets of
8 the obligors, including rights to payment from the firm's contingency fee cases. (*Id.*)

9 G&K, a general partnership, is a plaintiff's law firm based in Los Angeles, California
10 practicing in the areas of personal injury, defective products, sexual abuse, toxic torts, business
11 law, employment law, and aviation law. (*Id.* ¶ 3.) A significant number of G&K's matters are
12 undertaken on a contingency basis such that G&K receives payment of its legal fees only if a case
13 resolves in favor of G&K's clients. (*Id.*) Girardi is the founding partner of G&K. (*Id.*)

14 **B. CAL II's Loan and Security Interests**

15 In or around July 5, 2011, G&K and CAL II entered into a loan transaction (as amended,
16 the "Loan") in which G&K borrowed the principal amount of \$3,500,000 for the purpose of
17 funding its operations. (Cody Decl. ¶ 6 & Ex. 1.) The Loan was secured against, among other
18 things, G&K's rights to payment for its representation of clients in various contingency fee cases.
19 (*Id.*) Girardi, the principal partner of G&K, acted as guarantor of the loan and provided to CAL II
20 the Case List that described the Expected Fees. (*Id.*) CAL II duly filed a UCC-1 against G&K on
21 July 6, 2011, which was designated as Filing No. 11-7275806299 and consistently "continued" to
22 preserve its primacy. (*Id.*; *see also id.* ¶¶ 7, 9, 11, 16, and 21 & Exs. 1, 2, 4, 6, 7, and 11.)

23 Throughout the years that followed, between 2011 and 2019, CAL II and Debtors entered
24 into several iterations of the credit arrangement in which Debtors increased the principal amount
25 of the debt to up to \$8 million. (*Id.* ¶¶ 8-11, 16, and 19-21 & Ex. 2, 4, 6, 7, and 11.) CAL II duly
26 filed several continuations and amendments to its financing statements to maintain its perfected
27 security interests in all assets of the Debtors. (*Id.*) In recognition of CAL II's continuing lien
28 against the G&K assets, Girardi intermittently updated the G&K Case List to reflect new cases in

1 which G&K had been retained and old cases which had been settled or dismissed. (*Id.* ¶ 19.)

2 On or around November 8, 2019, G&K executed and delivered to CAL II that certain
3 Fourth Amended and Restated Promissory Note, in the maximum amount of \$8,000,000, and
4 secured by CAL II’s continuing security interests in substantially all of the Debtors’ respective
5 assets (“Note”). (*Id.* ¶ 21 & Ex. 11.) As part of the consideration given to CAL II in exchange for
6 the Loan evidenced by the Fourth Amended and Restated Promissory Note, the Debtors duly
7 executed and delivered to CAL II that certain Confession to Judgment dated November 12, 2019,
8 pursuant to CCP §§ 1132-1134 (“Confession to Judgment”), and agreed to entry of judgment
9 without trial if, after Debtors’ default under the Loan and notice thereof, the Debtors did not cure
10 the default. (*Id.* ¶ 22 & Ex. 12.) The parties agreed that judgment would be (i) in the amount of
11 \$8,000,000 (plus any other advances and legal expenses, less any payments made by G&K), (ii)
12 for immediate possession of G&K’s collateral, and (iii) for post-judgment attorneys’ fees and
13 expenses. (*Id.*)

14 **C. Debtors Incur Significant Debt and Pledge CAL II’s Collateral to Other**
15 **Creditors While Misleading CAL II.**

16 In the Loan documents, the Debtors expressly covenanted, among other things, not to
17 “create, incur, assume or have any indebtedness or other obligation...arising from the borrowing
18 of any money or...pursuant to any guaranty or other contingent obligation, except for
19 indebtedness and other obligations...fully and accurately described in the response to question 7
20 contained in the Questionnaire set forth in Exhibit A attached to and made a part of this
21 Agreement” without the CAL II’s prior written consent. (Cody Decl. ¶ 14 & Exs. 1 at 37-39 (§ 4),
22 3 at 85-87 (§ 4), 5 at 138-40 (§ 4), and 7 at 196-98 (§ 4), 11 at 264-66 (§ 4).) Further, in executing
23 each iteration of the Loan documents, Debtors were required to identify in writing all liens
24 against the collateral. (*Id.* & Exs. 1 at 46-47, 3 at 94-95, 5 at 147-48, 7 at 190-91, and 11 at 273-
25 74.) In each of the five iterations of the security agreement between 2011 and 2019, Debtors
26 represented in each one that, other than certain bank liens against real property and various
27 equipment liens, there were no other liens against the collateral. (*Id.*)

28 As early as 2015, without CAL II’s consent in contravention of the Loan documents and

1 without notice or disclosure to CAL II, the Debtors began granting to other lenders security
2 interests in CAL II’s collateral. (*Id.* ¶¶ 12, 13, 15, 17, and 18.) These security interests secured
3 significant amounts of debt incurred by G&K. (*Id.* ¶ 13, 15, 17, and 18.) Despite granting these
4 security interests, Debtors continued to represent to CAL II that no other liens existed against the
5 collateral (except bank liens and office equipment liens). (*Id.* ¶ 14 & Exs. 1 at 46-47, 3 at 94-95, 5
6 at 147-48, 7 at 190-91, and 11 at 273-74.) None of the below liens are “Permitted Liens” under
7 the Loan documents and were granted in violation of the Loan. (*Id.*)

UCC Filing Date	Creditor	Assets Pledged to Creditor	Est. Debt
11/5/2015	Law Finance Group	All or substantially all assets (Debtors)	Unknown ¹
4/11/2016	Stillwell Madison, LLC (“ <u>Stillwell</u> ”)	Certain accounts and general intangibles (G&K)	\$6.5 million
2/28/2017	Law Finance Group	All or substantially all assets (G&K)	\$17 million
8/18/2017	Virage Capital Management (“ <u>Virage</u> ”)	Certain accounts and general intangibles (G&K) (broadened on or around 1/31/2018 to all or substantially all assets of G&K)	\$9-10 million
8/31/2018	Nano Banc	All or substantially all assets (G&K)	Unknown

19 (RJN, Exs. 1-5.)

20 **D. The CAL II’s Collateral Includes Several Significant and Imminent Payments**
21 **to Debtors.**

22 An important and valuable component of CAL II’s collateral is G&K’s rights to payment
23 for its representation of clients in a number of lawsuits. (Cody Decl. ¶ 35.) G&K is expected to
24 receive at least \$10 million from settlements reached in certain settled cases, and such payments
25 are expected to be made imminently (“Settled Cases”). (*Id.*)

26 In addition to the cases referenced in paragraph 35 of the Cody declaration that have been

27 ¹ CAL II is informed and believes that this debt was satisfied before Law Finance Group’s
28 subsequent loan transaction evidenced in part by the financing statement filed by Law Finance
Group on or around February 28, 2017.

1 settled, several other cases are pending and will require Debtors' continued efforts and diligence,
2 as well as substantial additional working capital and funding of millions of dollars in case costs,
3 to bring them to a resolution ("Active Cases"). (*Id.* ¶ 36.) Once resolved, the Debtors are
4 expected to receive attorneys' fees in the tens of millions of dollars from the Active Cases. (*Id.*)
5 For instance, in just one consolidated case, *Southern California Gas Leak Cases*, Case No.
6 JCCP4861 (Cal. Super. Ct., Los Angeles County), Debtors represent over 8,000 clients who
7 alleged to have been exposed to harmful chemicals. (*Id.*) Debtors have represented to CAL II and
8 other creditors that the gross settlement in that case is expected to be \$1 billion. (Cody Decl. ¶ 36
9 & Ex. 14; *see also* RJN, Ex. 8 at 114 ("We believe a reasonable value of settlement will be in
10 excess of \$1 billion for our clients.") However, as discussed in section II.F., *infra*, if G&K loses
11 the confidence of its clients or employees and they terminate their relationships with G&K, G&K
12 may receive only a small fraction of the expected amounts from the Active Cases and be forced
13 into quantum meruit disputes with successor firms.

14 **E. Debtors' Significant Debt Strains Cash Flow and Depletes Current Collateral.**

15 By 2018, Debtors had incurred such a significant amount of debt that their cash flow
16 began to tighten and they became unable to pay their debts as they became due. Debtors defaulted
17 under the Loan, as well as under obligations owed to Stillwell and other lenders. (Cody Decl. ¶
18 23.) Debtors entered into forbearance agreements with Law Finance Group and Stillwell in or
19 around August 2018. (RJN, Exs. 6 at 26; 13 at 193, 286, and 288.)

20 Despite their promises of forthcoming payments, within just months of entering into
21 forbearance agreements with Law Finance Group and Stillwell, Debtors had defaulted under such
22 agreements. (Cody Decl. ¶ 23; RJN, Exs. 6, 13, and 15 at 476.) On or around January 17, 2019,
23 Law Finance Group sued Debtors for breach of the loan agreement and Girardi's personal
24 guaranty thereof. (Cody Decl. ¶ 23; *see* RJN, Ex. 6.) Law Finance Group sought recovery of
25 approximately \$15,000,000 plus interests and attorneys' fees and costs. (Cody Decl. ¶ 23; RJN,
26 Ex. 6 at 29.) On January 22, 2019, Law Finance Group sought a prejudgment writ of attachment
27 and eventually reached a settlement that provided for a repayment plan and a stipulated judgment
28 in the event default. (Cody Decl. ¶ 23; RJN, Exs. 7-10, 15 at 476-77.) Debtors defaulted on the

1 settlement agreement, and Law Finance Group filed and executed on the stipulated judgment.
2 (RJN, Ex. 10.) By October 2020, CAL II was informed by G&K that the entire Law Finance
3 Group obligation had been satisfied. (Cody Decl. ¶ 23 & Ex. 9.) This obligation appears to have
4 been paid with funds constituting CAL II’s collateral. (*Id.* ¶ 23.)

5 On or around May 24, 2019, Stillwell filed suit against Debtors for breach of contract and
6 fraud. (Cody Decl. ¶ 24; RJN, Ex. 11.) After litigation over whether arbitration should be
7 compelled, Stillwell consented to arbitration and, on or around February 25, 2020, Stillwell
8 sought a writ of attachment pending arbitration on an *ex parte* basis. (Cody Decl. ¶ 24; RJN, Exs.
9 12-13.) The court granted Stillwell’s *ex parte* application and issued right to attach orders in the
10 amount of nearly \$6,000,000. (Cody Decl. ¶ 24; RJN, Ex. 15.) In its July 14, 2020, written ruling,
11 the court found, among other things, that based on the significant evidence of Debtors’
12 nonpayment of lenders and service providers, Debtors are “insolvent...in that they are generally
13 not paying their debts as they become due.” (Cody Decl. ¶ 24; RJN, Ex. 15 at 480.)

14 Debtors also appear to have also stopped paying their service providers, including KCC
15 Class Action Services, LLC (“KCC”), which provided litigation support services to G&K. (Cody
16 Decl. ¶ 25; RJN, Ex. 16.) and GSI Group, Inc. for failing to pay for armed guard services at
17 Girardi’s home. (*Id.* ¶ 30; RJN, Ex. 21.) As a result of G&K’s nonpayment, in or around May
18 2019, KCC and G&K entered into mediation in which G&K ultimately agreed to pay KCC a total
19 of \$12,000,000, which was guaranteed by Girardi. (Cody Decl. ¶ 25; RJN, Ex. 17 at 509-10, 513,
20 and 517.) G&K made the first payment under this settlement in August 2019, but failed to make
21 any other payments.

22 Former clients are also seeking recovery against G&K for, among other things, settlement
23 amounts owed to them. Debtors’ former clients Joseph Ruigomez, Kathleen Ruigomez, and Jaime
24 Ruigomez (together, “Ruigomezes”) sued Debtors on or around June 26, 2019, for conversion,
25 breach of fiduciary duty, and breach of contract, seeking payment of settlement funds owed to the
26 Ruigomezes as a result of a settlement they reached with Pacific Gas and Electric. (Cody Decl. ¶
27 26; RJN, Ex. 22.) A stipulated judgment against Debtors was entered April 20, 2020 in the
28 principal amount of \$11,000,000. (Cody Decl. ¶ 26; RJN, Ex. 23.) The Ruigomezes have actively

1 sought to enforce their judgment. (*See* Cody Decl. ¶ 26; RJN, Ex. 24.) The Debtors have now
2 allegedly agreed to place the \$23,000,000 in *Abikzer* settlement funds into a Qualified Settlement
3 Fund and to improperly pay Ruigomezes from the attorneys fees’ earned in that case of
4 approximately \$5,700,000—monies that should be paid to CAL II based upon its first priority
5 perfected lien on those funds. (*Id.*) CAL II first learned this just 30-45 days ago. (*Id.*)

6 G&K’s former client Judy Selberg sued Debtors on or around October 29, 2020, for
7 recovery of amounts owing to Ms. Selberg from a \$500,000 settlement reached in as wrongful
8 death action. (*Id.* ¶ 30; RJN, Ex. 26.)

9 In addition to G&K’s lenders, suppliers, and former clients, its co-counsel is also seeking
10 to recover payments owed by Debtors. On or around September 29, 2020, the Law Offices of
11 Robert P. Finn filed suit against the Debtors alleging that they had failed to disburse funds owed
12 to Mr. Finn pursuant to a co-counsel agreement. (Cody Decl. ¶ 30; RJN, Ex. 25.) Failure to pay
13 co-counsel will lead to G&K being brought in less often on such opportunities.

14 These creditors are all actively pursuing recovery from G&K and at least three creditors
15 have already received Pre- and Post-Judgment Writs of Attachment *on CAL II’s collateral*.
16 (Cody Decl. ¶ 31.) As payment to G&K of attorneys’ fees from certain settled cases is imminent,
17 in an amount which CAL II believes may be as much as \$10,000,000, there is a significant risk
18 that this collateral will be paid to creditors other than CAL II or otherwise dissipated. (*Id.* ¶¶ 31,
19 35.)

20 **F. Debtors’ Insolvency Threatens to Impair or Eliminate Debtors’ Payment in**
21 **the Active Cases, Which Constitutes CAL II’s Collateral.**

22 As a result of Debtors’ significant debt obligations, the numerous judgments obtained
23 against Debtors, the pending litigation against Debtors, and the active enforcement efforts against
24 Debtors, Debtors’ cash flow has been constrained and they are not able to pay their debts as they
25 come due. (Cody Decl. ¶¶ 37-38.) In addition, there is a significant risk that Debtors’ financial
26 strain will impair the Debtors’ abilities to operate and obtain optimal results for their clients. (*Id.*
27 ¶ 38.) Part of G&K’s business model entails the representation of multiple clients—sometimes up
28 to thousands of separate plaintiffs—with similar claims arising from the same incident. (*Id.* ¶ 39.)

1 Other plaintiffs with similar claims are often represented by co-counsel. (*Id.*) As a result, if
2 G&K’s clients lose confidence in G&K’s abilities or stability, many of them may believe they
3 have a ready solution: terminate G&K and hire co-counsel, who is already knowledgeable about
4 the case, to represent them in the action. (*Id.*) If G&K is terminated, it may lose all or part of any
5 settlement or award paid out in the Active Cases to which G&K otherwise would be entitled if it
6 were not terminated and be exposed to the jeopardy of asserting quantum meruit claims for work
7 performed. (*Id.*) Already, CAL II has learned that several key attorneys at G&K—who have
8 significant relationships with G&K’s clients and referral sources—have been offered positions at
9 a competing plaintiff law firm in Los Angeles. (*Id.* ¶ 40.) If these attorneys are persuaded to
10 resign their positions at G&K, and the G&K clients for whom they are responsible leave G&K,
11 then G&K will sink only further into insolvency and chaos and CAL II’s ability to recover will be
12 irreparably harmed if not eliminated completely. (*Id.*)

13 Most disturbing, CAL II has learned of a recent offer by another law firm to acquire the
14 Debtors’ key attorneys and its key cases. (*Id.* ¶ 41.) If those attorneys and their clients should seek
15 employment and client representation by the new firm, CAL II’s collateral will be transferred to
16 yet another party with an interest in the collateral and will be irreparably harmed thereby. (*Id.*)

17 On top of all of the litigation and enforcement efforts by creditors, Girardi is also in the
18 midst of a highly publicized divorce from his wife, Erika Girardi, who was featured on Real
19 Housewives of Beverly Hills. (*Id.* ¶ 42.) This results in yet another party making claim to the
20 assets of G&K and Girardi. (*Id.*)

21 Based on CAL II’s experience as a sophisticated litigation finance lender for the plaintiffs’
22 bar, once clients, employees, and co-counsel lose confidence in a plaintiffs’ law firm, it can
23 rapidly deteriorate. If the firm begins hemorrhaging clients, key attorneys, referral sources, and
24 cases, it can be impossible for the firm to recover and to start generating revenue again. (*Id.* ¶ 43.)

25 **G. The Debtors’ Defaults Under the Loan.**

26 In October 2019, Girardi asked CAL II to increase the Loan by several million dollars.
27 This time, the public record revealed the Debtors’ borrowings from Law Finance and Stillwell,
28 and CAL II confronted Girardi about them. (Cody Decl. ¶ 19.) In response, on October 25, 2019,

1 Girardi wrote a letter to CAL II representing that: (i) the Law Finance Group loan (\$17M) had
2 been paid “by putting in a large sum of my own money” (i.e. CAL II’s lien on G&K’s attorneys’
3 fees had not been violated); (ii) he would “sign a stipulated judgment” in CAL II’s favor; (iii) he
4 would simultaneously send a letter to defense counsel in certain settled cases known as the *Lion*
5 *Air Crash Cases* directing defendant to pay that portion of the settlement which represented his
6 legal fees up to \$3.5M, directly to CAL II; and (iv) that one of his largest cases, *Porter Ranch*
7 (further described in Paragraph 36 below), was now worth almost a billion dollars and that he
8 believed “very reasonable settlement would be in the \$900 million area.” (*Id.* & Exs. 9-10.)
9 Girardi also represented that the Stillwell loan was in dispute and that he had counterclaims which
10 exceeded the amount due under the Stillwell Loan. (*Id.*) In any event, he said, CAL II had a first
11 lien position dating back to 2013 and that CAL II was fully protected. (*Id.*, Ex. 9.)

12 Based on Debtors’ representations about G&K’s financial health, prospects for payment
13 and various other protections (such as the \$3.5 million paydown on the *Lion Air Crash Cases* and
14 purported pay off of the Law Finance Group loan largely from non-collateral funds), CAL II
15 agreed to amend the Loan in November 2019, this time understandably requiring Debtors to
16 execute the Confession to Judgment in the event of Debtors’ default. (Cody Decl. ¶¶ 19-21.)

17 On July 20, 2020, following a call to CAL II seeking more money, Girardi sent a letter to
18 CAL II saying that “the firm has never been more successful.” (*Id.* at 27 & Ex. 13.) Girardi made
19 this statement following the ruling in the Stillwell Action *six days earlier that had adjudged*
20 ***G&K insolvent.*** (*Id.*; see also RJN, Ex. 15 at 9.) Girardi further boasted that he will “settle one of
21 the larger cases for a billion dollars” and that G&K owed him “\$103 million for money I put up
22 for costs.” (Cody Decl. ¶ 27 & Ex. 13.) CAL II declined to provide G&K with any additional
23 financing. In early August of 2020, Girardi continued pressuring CAL II to provide additional
24 funds, representing that the defendants in the *Abikzer* action had agreed to pay \$90 million as
25 soon as the courts reopen, which was false both as to timing and as to amount. (*Id.* ¶¶ 28-30 &
26 Exs. 14-15.) CAL II continued to refuse to provide additional funds. (*Id.* ¶¶ 28-29.)

27 Debtors had defaulted under the Loan in numerous ways, including by failing to make
28 payments due under the Note, violating several covenants owed to CAL II under the Loan. (Cody

1 Decl. ¶ 32 & Ex. 16.) CAL II formally notified Debtors about their defaults by letter dated
2 October 16, 2020, and demanded full and immediate payment of the Loan. (*Id.*)

3 **H. CAL II Obtains Judgment and Immediately Begins Post-Judgment**
4 **Enforcement Efforts.**

5 After providing the Debtors with the required ten days' notice to cure, on October 27,
6 2020, the Judgment by Confession was filed and entered against the Debtors in the sum of
7 \$6,250,589.59 plus post-judgment interest and reasonable attorneys' fees and costs incurred in
8 collecting the judgment ("Judgment") (RJN, Ex. 27.) The Judgment also grants CAL II the right
9 to immediate possession of the personal property of G&K. (*Id.*)

10 CAL II promptly began its judgment enforcement efforts, including obtaining abstracts of
11 judgment and having them recorded in Los Angeles, Orange, and Riverside Counties. (Cody
12 Decl. ¶ 34; RJN, Ex. 28.) In addition, Debtor obtained Writs of Execution and opened levy
13 proceedings on various personal property of Debtors disclosed on the Debtors' financial
14 information provided throughout the years in connection with the Loan transaction. (Cody Decl. ¶
15 34; RJN, Ex. 29.) CAL II is also serving post-judgment discovery on Debtors and will be noticing
16 a Debtor's examination. (*Id.* ¶ 34.) Despite these efforts, CAL II is not hopeful for its chances of a
17 meaningful recovery using these methods based in part on the fact that Ruigomezes, Stillwell
18 Madison, and KCC already have tried levying on Debtors' assets and have likely depleted
19 whatever assets may have once been available. *See* Section II.E., *supra*.

20 **III. THIS COURT SHOULD APPOINT A RECEIVER ON AN EX PARTE BASIS**

21 **A. Legal Standard.**

22 California Code of Civil Procedure section 564(b) permits the Court to appoint a receiver
23 in the following instances:

- 24 (1) In an action . . . by a creditor to subject any property or fund to the creditor's claim
25 . . . on the application of the plaintiff . . . whose right to or interest in the property or fund,
26 or the proceeds thereof, is probable, and where it is shown that the property or fund is in
27 danger of being lost, removed or materially injured.

28 * * *

- 1 (3) After judgment, to carry the judgment into effect.
2 (4) After judgment, to dispose of the property according to the judgment...or pursuant to
3 the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)).

4 ***

- 5 (6) Where a corporation is insolvent, or in imminent danger of insolvency, or has
6 forfeited its corporate rights.

7 * * *

- 8 (9) In all other cases where necessary to preserve the property or rights of any party.
9 CCP §§ 564(b)(1), (3)), (4)), (6)), and (9)). In the present case, a receiver is justified under each
10 of these five subsections.

11 A trial court has wide discretion in deciding whether to appoint a receiver. *Sibert v.*
12 *Shaver* (1952) 113 Cal.App.2d 19, 21 (an order appointing a receiver “will not be reversed in the
13 absence of a clear showing of an abuse of discretion”); *Maggiore v. Palo Alto Inn, Inc.* (1967)
14 249 Cal.App.2d 706, 710-11 (“The discretion of the trial court is so broad that...[t]o justify our
15 interference, it must clearly appear that the appointment [a receiver] was an arbitrary exercise of
16 power.”) (citations omitted).

17 The court may appoint a receiver to manage the business affairs of a law firm. *O’Flaherty*
18 *v. Belgum* (2004) 115 Cal.App.4th 1044, 1061-62. Indeed, in early 2019, Mr. Weiss (the proposed
19 receiver here) was appointed by the U.S. District Court for the Central District of California as a
20 receiver over the financially troubled law firm Eagan Avenatti, LLP. *See In re Eagan Avenatti,*
21 *LLP*, Case No. 18-01644-VAP-KES, C.D. Cal., February 13, 2019 (ECF No. 53).

22 **B. The Prompt Appointment of a Receiver Over G&K Is Necessary to Preserve**
23 **the Value of CAL II’s Collateral, Which Is in Danger of Being Impaired or**
24 **Eliminated.**

25 As set forth above, CAL II is a secured creditor of Debtors and has liens in Debtors’
26 property granted by Debtors in connection with the Loans and also obtained as a result of the
27 Judgment. Debtors have incurred unsustainable levels of debt (in the eight or perhaps nine digits)
28 and other liabilities and are now unable to pay CAL II and their other creditors. These creditors

1 are becoming increasingly active in pursuing repayment from Debtors, who have demonstrated
2 they will assign away CAL II's collateral to the creditor screaming the loudest, without regard to
3 CAL II's superior rights in such collateral and without notice.

4 Debtors stand to receive significant payments in the Settled Cases any day, and CAL II
5 cannot afford to take the risk to wait and see if it will receive any portion of such payments or if
6 they will be wholly diverted to other, junior creditors or otherwise dissipated. Furthermore, due to
7 the chaos from the increasing litigation and enforcement efforts targeted at the Debtors, G&K
8 risks losing the confidence of its clients in the Active Cases and, as a result, payment in those
9 cases is in serious danger.

10 The prompt appointment of a receiver on an *ex parte* basis is necessary to help ensure that
11 payments received in the Settled Cases are equitably distributed and not lost, concealed,
12 improperly transferred or assigned, or otherwise dissipated. Furthermore, a receiver should be
13 appointed immediately to preserve G&K's ability to operate smoothly and maximize returns in
14 the Active Cases without jeopardizing G&K's relationships with its client, employees, co-
15 counsel, and referral sources. If G&K loses clients to, for example, co-counsel in the Active
16 Cases, G&K's rights to payments in such Active Cases will be significantly impaired if not
17 eliminated completely. These payment rights are estimated to be valued at over \$10 million.
18 Accordingly, a receiver should be immediately appointed.

19 **C. Appointment of Receiver on an Ex Parte Basis Is Warranted and Necessary to**
20 **Carry Out the Judgment into Effect.**

21 Appointment of a receiver is also warranted and necessary to carry the Judgment into
22 effect. In combination with section 564(3) and (4) of the CCP, section 708.620 provides for the
23 appointment of a receiver to enforce a judgment:

24 The court may appoint a receiver to enforce the judgment where the
25 judgment creditor shows that, considering the interests of both the
26 judgment creditor and the judgment debtor, the appointment of a
27 receiver is a reasonable method to obtain the fair and orderly
28 satisfaction of the judgment.

27 CCP § 708.620. The official comment to this section explains that section 708.620 gives broad
28 authority for the appointment of a receiver to enforce a judgment:

1 Section 708.620 supersedes portions of Section 564 that authorized
2 the appointment of a receiver to enforce a judgment. It eliminated as
3 a prerequisite to the appointment of a receiver a showing that a writ
4 of execution has been returned unsatisfied or that the judgment
5 debtor refuses to apply property in satisfaction of the judgment as
6 was formerly required by subdivision 4 of Section 564. *See Olsan v.*
7 *Comora*, 73 Cal.App.3d 642, 647-49, 140 Cal.Rptr. 835 (1977).
8 CCP § 708.610 (official cmt. 1982). According to Witkin, “a judgment for possession or sale may
9 be enforced by a receiver appointed under [section] 709.610 et seq.” 8 B.E. Witkin, *Cal.*
10 *Procedure 4th* (1997), Enforcement of Judgment, § 302, p. 305. The receiver’s fees and costs
11 may be added to the judgment. CCP § 685.070(a)(5).

12 Here, the prompt appointment of a receiver is not only a reasonable method to obtain a
13 fair and orderly satisfaction of the Judgment, but it may also be the only method by which a
14 meaningful recovery can be obtained. What likely will be a primary source of CAL II’s
15 recovery—payments in the Settled Cases—are imminent and, without a receiver in place, there is
16 a serious risk Debtors will dissipate these funds or pay them to junior creditors without regard to
17 CAL II’s rights to such payments as G&K’s senior secured creditor. A receiver will help ensure
18 an orderly and transparent disbursement of funds so that Debtors’ creditors and clients are paid in
19 an equitable and lawful manner. A receiver may also prevent future claims against Debtors for
20 unpaid settlement funds similar to those asserted by their former clients, the Ruigomezes and Ms.
21 Selberg, or their former co-counsel, Mr. Finn. These benefits of the appointment of a receiver will
22 inure to all of Debtors’ creditors and constitutes a fair and orderly satisfaction of the judgment.

23 An appointment of a receiver will also benefit Debtors because it will allow them to focus
24 on maximizing their clients’ recovery in the Active Cases—and as a result maximize their
25 proceeds in such cases. If Debtors are forced to continue to expend resources litigating the claims
26 of their numerous current creditors (and whatever future creditors assert claims against Debtors)
27 or trying to avoid enforcement efforts, there is a significant risk they will lose the confidence of
28 their clients and employees, which would in turn impair their proceeds from the Active Cases and
their ability to obtain new cases. Furthermore, the Judgment provides that CAL II “shall have the
immediate possession of all personal property” of G&K. Appointment of a receiver is the
appropriate and reasonable method to carry out this provision.

1 While a creditor seeking a post-judgment receiver need not show that it has exhausted all
2 other enforcement remedies, as mentioned above CAL II is simultaneously pursuing other
3 remedies even though it does not expect a significant return from such efforts. CAL II has
4 obtained writs of execution and has commenced the levy process on various known assets of
5 Debtors (e.g., deposit accounts and investment accounts). However, it expects that its levy efforts
6 may not be successful because numerous creditors have been actively trying to enforce judgments
7 and writs of attachment against the same assets since 2019. A receiver will avoid the timing
8 problems associated with enforcements methods such as levy of deposit accounts, for example.

9 **D. Appointment of a Receiver Is Warranted Because Debtors are Insolvent.**

10 Section 564(b)(6) of the CCP provides for the appointment of a receiver “where a
11 corporation is insolvent[] or in imminent danger of insolvency.” As established above, and as this
12 Court has previously found, Debtors are insolvent because they are unable to pay their debts as
13 they come due. *See Sunset Farms, Inc. v. Superior Court* (1935) 9 Cal.App.2d 389, 401, 405 (“A
14 debtor who is generally not paying his or her debts as they become due is presumed to be
15 insolvent.”); Cal. Civ. Code § 3439.02(c). Their insolvency is evidenced by the numerous
16 defaults under the Loan and under loans with other lenders, the numerous lawsuits alleging
17 nonpayment, and court rulings finding the same. (Cody Decl. ¶¶ 23, 24, 25, 26, and 30; RJN, Exs.
18 6-26.) While G&K is not a corporation, it is insolvent, and appointment of a receiver is justified
19 by the same rationale that justifies appointment of a receiver in the context of a corporation: to
20 preserve value for creditors. *O’Flaherty v. Belgum* (2004) 115 Cal.App.4th at 1048 (describing
21 purpose of receivership in part to “preserve the Partnership’s value”). Further, appointment of a
22 receiver is authorized “in all other cases where necessary to preserve the property or rights of any
23 party.” CCP § 564(b)(9). As established throughout this Application, appointment of a receiver is
24 necessary to preserve CAL II’s rights in the proceeds from the Settled Cases and Active Cases
25 and Debtors’ other property. Accordingly, a receiver is warranted and necessary.

26 **E. The Court Should Enter a Preliminary Injunction in Aid of the Receiver.**

27 Several independent statutory grounds exist for the issuance of injunctive relief. Section
28 526(a) of the CCP gives the Court discretion to issue an injunction in any of the following

1 circumstances:

2 (1) When it appears by the complaint that the plaintiff is entitled to
3 the relief demanded, and the relief, or any part thereof, consists in
4 restraining the commission or continuance of the act complained of,
5 either for a limited period or perpetually.

6 (2) When it appears by the complaint or affidavits that the
7 commission or continuance of some act during the litigation would
8 produce waste, or great or irreparable injury, to a party to the action.

9 (3) When it appears, during the litigation, that a party to the action is
10 doing, or threatens, or is about to do, or is procuring or suffering to
11 be done, some act in violation of the rights of another party to the
12 action respecting the subject of the action, and tending to render the
13 judgment ineffectual.

14 CCP § 526(a).

15 Once appointed, the receiver cannot fully and effectively comply with his obligations
16 under the Order without an order prohibiting Debtors from interfering with the receiver's
17 operation and maintenance of G&K's business, collection of the Debtors' rights to payment, and,
18 if necessary, his liquidation of G&K's assets to pay the Judgment. For instance, to respect CAL
19 II's senior secured status, Debtors must be prevented from assigning away or dissipating the
20 imminent payments from the Settled Cases or other funds. Moreover, the receiver will need
21 Debtors' cooperation in performing his duties. As such, CAL II requests that the Court enter a
22 preliminary injunction prohibiting Debtors from interfering with the receiver or the receivership
23 estate until the receivership estate has terminated and the receiver has been discharged.

24 **IV. CONCLUSION**

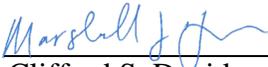
25 For all of the reasons stated above, CAL II respectfully requests that this Court grant this
26 Application and appoint Mr. Weiss as the receiver over G&K with all powers described in the
27 Order, including powers to operate and maintain the non-legal aspects of G&K's business, collect
28 the Debtors' rights to payment, and, if necessary, liquidate of G&K's assets to pay the Judgment
and other creditor claims.

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Dated: December 4, 2020

SNELL & WILMER L.L.P.

By: 

Clifford S. Davidson
Keith M. Gregory
Marshall J. Hogan

Attorneys for CALIFORNIA ATTORNEY
LENDING II, INC.

Exhibit 1

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14 Attorneys for California Attorney Lending II, Inc.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

13 California Attorney Lending II, Inc.,

14 Plaintiff,

15 v.

16 Girardi & Keese, a California General
17 Partnership and Thomas V. Girardi,
18 Individually,

19 Defendants.

Case No. 20STCP03546

**[PROPOSED] ORDER GRANTING
CALIFORNIA ATTORNEY LENDING
II, INC.'S *EX PARTE* APPLICATION
FOR ORDER: (1) APPOINTING
RECEIVER; (2) ISSUING
PRELIMINARY INJUNCTION IN AID
OF RECEIVER; AND (3) SETTING A
HEARING TO SHOW CAUSE RE:
CONFIRMATION OF APPOINTMENT
OF RECEIVER AND PRELIMINARY
INJUNCTION IN AID OF RECEIVER**

Hearing Information:

Date: December 7, 2020
Time: 8:30 a.m.
Dept.: 15

1 The Court, having considered: (i) joint *ex parte* application (“Application”) filed by
2 judgment creditor California Attorney Lending II, Inc. (“CAL II”) for entry of an order (1)
3 appointing a receiver, (2) issuing a preliminary injunction in aid of receiver, and (3) setting a
4 hearing to show cause re: confirmation of appointment of receiver and preliminary injunction in
5 aid of receiver; (ii) the Declaration of Paul Cody in Support of the Application; (iii) the
6 Declaration of Brian Weiss in Support of the Application; (iv) the Declaration of Marshall J.
7 Hogan in Support of the Application; (v) the Declaration of Kate L. Beneviste; (vi) the Request
8 for Judicial Notice; and (vii) the Nomination of Brian Weiss as Receiver; and good cause
9 appearing therefor:

10 **RECEIVER’S APPOINTMENT AND DUTIES**

11 **IT IS HEREBY ORDERED:**

- 12 1. **The Application.** The Application is granted in its entirety.
- 13 2. **Appointment of Receiver.** It is hereby ordered that Brian Weiss shall be and is appointed
14 as receiver (“Receiver”) to take over financial management and financial control of
15 Girardi & Keese, a California general partnership (“G&K”) and its property, to take
16 possession of its current and future cash assets, account, payment intangibles, deposit
17 accounts, and the proceeds of such accounts, payment intangibles, and deposit accounts,
18 and to assume and pursue, as appropriate, its claims and rights to payment.
- 19 3. **Receiver’s Oath and Bond.** The Receiver shall immediately, and before performing any
20 duties (i) execute and file a Receiver’s oath; and (ii) file a bond in the amount of
21 \$10,000.00 pursuant to Code of Civil Procedure (“CCP”) section 567 with the Court.
- 22 4. **Receiver’s Fees.** The Receiver may charge for the Receiver’s services no more than
23 \$650.00 per hour.
- 24 5. **Management Company.** The Receiver may employ Force Ten Partners, LLC (“Force
25 10”) where the Receiver is employed, to assist with the Receiver’s duties at the Receiver’s
26 direction, including but not limited to accounting, reporting, asset investigation and other
27 tasks. The members of Force 10, other than the Receiver, shall be compensated at hourly
28 rates ranging from \$255.00 to \$650.00 per hour.

- 1 6. **Disclosure.** The Receiver shall immediately disclose to all parties any financial
2 relationship between the Receiver and any company hired to assist in the management of
3 the receivership property.
- 4 7. **General Duties.** After qualifying, the Receiver shall have the power to take possession of
5 and manage the business of G&K and its tangible and intangible property with all the
6 usual powers, rights and duties of receivers appointed by this Court or otherwise defined
7 by statute, including but not limited to the power to operate and conduct G&K in the
8 ordinary course of its business and collect fees, costs and income owed to G&K, except
9 that the Receiver is not authorized to provide legal services on behalf of G&K's clients.
- 10 8. **Inventory.** Within 45 days after qualifying, the Receiver shall file an inventory of all
11 property possessed under this Order. Certain client specific information, such as list and
12 status of each case, shall be redacted. The Receiver shall file a supplemental inventory of
13 all subsequently obtained property.
- 14 9. **Expenditures.** In his discretion, the Receiver is authorized to satisfy obligations owed to
15 G&K creditors. The Receiver may in his discretion expend money coming into his
16 possession to operate and preserve G&K's business and only for the purposes authorized
17 in this Order. Unless the Court orders otherwise, the Receiver shall to the extent practical
18 hold the balance in interest-bearing accounts in accordance with section 569 of the CCP.
- 19 10. **Monthly Accounting of Receiver's Income, Expenses and Fees.**
- 20 a. The Receiver shall each month prepare and serve on the parties, but not file, an
21 accounting of the income and expenses incurred in the administration of G&K,
22 including the Receiver's fees and expenses by him or on his behalf. The monthly
23 reports shall provide a narrative of the material events, a financial report and a
24 statement of all fees paid or due to the Receiver, Force 10 and any other
25 professionals retained, showing the itemized services, broken down in 1/10th hour
26 increments. The report shall state the hourly fees and any other basis for the fees.
- 27 b. The Receiver may pay monthly the Receiver's, Force 10's, and the Receiver's
28 professionals' fees and expenses only by the following procedures:

- 1 i. By serving on all parties a notice of intent to pay to which no objection is
2 served on the Receiver within 20 days of the date the notice is served; or
3 ii. By serving and filing a request for interim payment, which the Court then
4 approves; or
5 iii. By obtaining and filing an agreement among all the parties approving the
6 payment; or
7 iv. By filing the Receiver's final accounting and report, which the Court then
8 approves.
- 9 c. The Receiver shall not reimburse the Receiver for the Receiver's general office
10 administration expenses or overhead without Court approval. These expenses
11 include, for example, office supplies and employee payroll, benefits and taxes.

12 **11. Management.**

- 13 a. The Receiver shall operate G&K and take possession of all bank and other accounts
14 relating to G&K and its property.
- 15 b. The Receiver may hire legal counsel, accounting and tax professionals at normal
16 and customary rates to represent the Receiver in his duties, provided however, legal
17 counsel retained to pursue fraudulent and avoidance actions shall be on a
18 contingency basis.
- 19 c. The Receiver may do all the things, and incur the risks and obligations, ordinarily
20 done or incurred by owners, managers and operators of businesses and property
21 similar to that possessed by the Receiver, except that the Receiver shall not make
22 any capital improvements to property without prior Court approval and the
23 Receiver shall not provide legal services to G&K's clients.

24 **12. Bank Accounts.**

- 25 a. The Receiver may establish accounts at any financial institution insured by an
26 agency of the United States government that are not parties to this proceeding and
27 shall deposit in those accounts any funds received in connection with G&K's
28 business.

- 1 b. The Receiver shall have control of, and be the sole authorized signatory for all bank
2 accounts of G&K and client trust accounts or IOLTA accounts, including all
3 accounts at any bank, title company, escrow agent, financial institution or
4 brokerage firm which has possession, custody or control of any assets or funds of
5 G&K, or which maintains accounts of the Receiver, or which maintains accounts
6 where G&K's employees and agents in such capacity have signatory authority,
7 including but not limited to Thomas V. Girardi.
- 8 c. The Receiver is authorized to open and close bank accounts, including client trust
9 accounts or IOLTA accounts and change the signatories on the existing bank
10 accounts to the name of the Receiver. No other parties are permitted to open or
11 close bank accounts in the name of G&K.
- 12 d. Place attorney liens on active cases and assert quantum meruit rights for the benefit
13 of G&K.
- 14 **13. Additional Powers and Duties of Receiver.** The Receiver shall be authorized to and
15 shall perform the following duties and functions:
- 16 a. Be provided with unfettered access to all past and current client engagement
17 contracts, case files, books and records, electronic files, and other documents
18 necessary to manage the receivership assets without limitation;
- 19 b. The ability to notify all of G&K's clients, counterparties in G&K's cases, and any
20 other party the Receiver deems appropriate of the receivership and to demand that
21 all monies be paid to an account as specified by the Receiver.
- 22 c. Provide a copy of the signed receivership order to any party the Receiver deems
23 necessary in order to direct payment to the Receiver, manage the receivership
24 assets, and to perform investigations;
- 25 d. Be the sole signatory to any contract of G&K during the receivership including but
26 not limited to new litigation cases;
- 27 e. The ability to investigate fraudulent transfers and avoidance actions and to pursue
28 litigation;

- 1 f. The power to sell assets upon Court approval;
- 2 g. Make payments toward CALII's Judgment upon Court approval;
- 3 h. Make all inquiries G&K might have made;
- 4 i. Bring and defend actions in his own name, as Receiver, or in the name of G&K;
- 5 j. Endorse and deposit any settlement payments, checks, money, negotiable
- 6 instruments or commercial paper through which G&K is compensated in any
- 7 manner whatsoever into the receivership account;
- 8 k. Pay all necessary costs and expenses to operate G&K;
- 9 l. Manage the business affairs of G&K, including monitoring and approving of
- 10 necessary expenses needed to operate the business and accepting new business
- 11 contracts;
- 12 m. Have access to and become the "administrative user" for all of G&K's software
- 13 programs, servers and website;
- 14 n. Maintain detailed accounting records of all deposits to and all expenditures from
- 15 the Receiver's bank account until the termination of the receivership;
- 16 o. Disburse funds to CAL II and/or G&K, or any creditor of G&K as ordered by this
- 17 Court;
- 18 p. Conduct investigation and discovery, as may be necessary to locate and account for
- 19 all of the assets of or managed by G&K, including receiving, collecting and
- 20 reviewing all mail addressed to G&K, wherever directed;
- 21 q. Take such action as is necessary and appropriate to preserve and take control of and
- 22 to prevent the waste, dissipation, loss of value, concealment, or disposition of any
- 23 assets of or managed by G&K;
- 24 r. Enter into settlements on behalf of G&K with the approval of the Court;
- 25 s. Hire counsel to represent G&K's interests in any application for fees and costs in
- 26 any case in which G&K may be entitled to reimbursement of fees and costs,
- 27 including but not limited to those cases in which G&K attorneys or resources were
- 28 provided; and

- 1 t. Have the sole authority regarding whether to file a petition for bankruptcy on behalf
2 of G&K and any such power residing in Thomas V. Girardi or any other person is
3 hereby revoked and vested solely with the Receiver until further order of this Court.

4 **14. Insurance.**

- 5 a. The Receiver shall determine whether there is sufficient insurance coverage.
6 b. The Receiver shall notify the insurer that the Receiver is to be named as an
7 additional insured on each insurance policy on the property.
8 c. If the Receiver determines that the property does not have sufficient insurance
9 coverage, the Receiver shall immediately notify the parties and shall procure
10 sufficient insurance, if available to him.
11 d. If the Receiver does not have sufficient funds to obtain insurance, the Receiver
12 shall seek instructions from the Court on whether to obtain insurance and how it is
13 to be paid for.
14 e. The Receiver shall not be liable for G&K's failure to carry or obtain adequate
15 insurance coverage.

16 **15. Bankruptcy.**

- 17 a. No defendants nor any of their agents, successors or any person or entity acting on
18 their behalf, nor any third parties or creditors of G&K, nor any of their agents,
19 successors or any person or entity acting on their behalf, shall attempt to file a
20 bankruptcy petition on behalf of G&K.
21 b. If the Receiver receives notice that G&K filed a bankruptcy petition and part of the
22 bankruptcy estate includes real or personal property that is the subject of this Order,
23 the Receiver shall have the following duties:
24 i. The Receiver shall immediately contact CAL II and determine whether
25 that party intends to move in the bankruptcy court for an order for (1)
26 relief from the automatic stay, (2) relief from the Receiver's obligation to
27 turn over the property (11 U.S.C. § 543) or (3) dismissing the bankruptcy
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case. If the party has no intention to make such a motion, the Receiver shall immediately move to dismiss the bankruptcy filing.

ii. The Receiver may retain legal counsel to advise the Receiver with regard to issues arising out of the bankruptcy proceedings that affect the receivership.

16. **Taxpayer ID Numbers.** The Receiver may use any federal taxpayer identification numbers relating to G&K and its property for any lawful purpose.

17. **Court Instructions.** The Receiver may at any time apply to this Court on an *ex parte* basis for further instructions and order and for additional powers necessary to enable the Receiver to perform his duties properly. Nothing in this Order shall be deemed a waiver of or preclude any party from requesting on notice to all other parties, modification of this Order and all other parties shall be entitled to oppose such request.

18. **G&K Responsible for Fees and Expenses of the Receivership.** G&K shall be responsible for all fees and expenses associated with the receivership and such costs will be added to the Judgment pursuant to California Code of Civil Procedure section 685.070(a)(5). The Receiver, Force 10, and the professionals retained by the Receiver shall be paid first from the revenue of G&K. If the revenue is insufficient to pay the Receiver's fees when due each month, the balance shall be paid by CAL II; provided, however, that after CAL II has filed a Repayment Notice, CAL II shall no longer be responsible to pay any fees of the Receiver, Force 10, or any professional retained by the Receiver, except in connection with procedures necessary for terminating the receivership. CAL II shall have the right to seek reimbursement from G&K of the fees paid.

19. **Termination of the Receivership.**

a. After CAL II is repaid in full and after expiration of the 30-day notice period set forth in this section, the Receiver shall promptly move for termination of the receivership, approval of his final accounting and payment, and exoneration of his bond.

- 1 b. Upon being repaid in full, CAL II shall notify the Receiver in writing of such
2 repayment, file a notice of repayment with the Court (“Repayment Notice”), and
3 promptly serve the Repayment Notice on Stillwell Madison, LLC and any other
4 creditor requesting notice or as directed by the Receiver.
- 5 c. The Repayment Notice shall state that the Receiver will move to terminate the
6 receivership in no less than 30 days from the date of the Repayment Notice. Any
7 creditor of G&K or Girardi shall have the right to move to preserve the receivership
8 and may do so on an *ex parte* basis.
- 9 20. **Notification of Termination.** CAL II shall notify the Receiver in writing within 48 hours
10 of any event within CAL II’s knowledge that terminates the receivership.
- 11 21. **Receiver’s Final Report and Account and Discharge.**
- 12 a. *Motion required.* Discharge of the Receiver shall require a Court order upon
13 noticed motion for approval of the Receiver’s final report and account and
14 exoneration of the Receiver’s bond, if any.
- 15 b. *Time.* Not later than 60 days after the receivership terminates, the Receiver shall
16 file, serve and obtain a hearing date on a motion for discharge and approval of the
17 final report and account.
- 18 c. *Contents of Motion.* The motion to approve the final report and account and for
19 discharge of the Receiver shall contain the following.
- 20 d. *Declaration(s).* Declaration(s) (i) stating what was done during the receivership, (ii)
21 certifying the accuracy of the final accounting, (iii) stating the basis for the
22 termination of the receivership, and (iv) stating the basis for an order for the
23 distribution of any surplus or payment of any deficit.
- 24 e. *Accounting summary.* A summary of the receivership accounting, which shall
25 include (i) the total revenues received, (ii) the total expenditures identified and
26 enumerated by major categories, (iii) the net amount of any surplus or deficit and
27 (iv) evidence of necessary supporting facts.
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1 22. **Notice to Receiver.** CAL II shall promptly notify the Receiver in writing of the names,
2 addresses, and telephone numbers of all parties who appear in the action and their counsel.
3 The parties shall give notice to the Receiver of all events that affect the receivership.

4 23. **Liability of the Receiver.** Except for an act of gross negligence or intentional
5 misconduct, the Receiver shall not be liable for any loss or damages incurred by G&K, its
6 officers, shareholders, agents, servants, partners, employees, contractors, creditors,
7 counsel or any other persons or entities by reason of any act performed or omitted to be
8 performed by the Receiver in connection with the discharge of his duties. No individual or
9 entity may sue the Receiver or initiate any action against the receivership estate without
10 first obtaining permission of this Court.

11 **INJUNCTION / TEMPORARY RESTRAINING ORDER**

12 **IT IS FURTHER ORDERED** that G&K and Girardi to do the following:

13 24. **Turn Over Property.** Immediately turn over possession of all property of G&K to the
14 Receiver when the appointment becomes effective, including but not limited to all past
15 and current client engagement contracts, case files, books and records, electronic files, and
16 other documents necessary to manage the receivership assets and all funds in G&K
17 accounts, including client trust accounts.

18 25. **Access to G&K's Offices and Computer Systems.** Immediately turn over to the
19 Receiver all keys and passwords relating to the property and grant the Receiver unfettered
20 access to G&K (except information protected by the attorney-client privilege or work
21 product doctrine) and all premises related thereto, and all G&K computer systems.

22 26. **Insurance.**

- 23 a. Immediately advise the Receiver about the nature and extent of G&K's insurance;
24 b. Immediately name the Receiver as an additional insured on each insurance policy;
25 and
26 c. Do not cancel, reduce or modify the insurance coverage.

27 27. **Notify Receiver of Clients and Cases.** Within 7 days after the appointment of the
28 Receiver, G&K and Girardi, and G&K's office manager must meet with the Receiver and

1 CAL II and disclose all current clients and cases being managed by G&K and all cases in
2 which the services of an G&K attorney or G&K resources were provided, whether the
3 case was filed in the name of G&K or another law firm. G&K shall also provide access to
4 the engagement agreements between G&K and its clients.

- 5 28. **Respond to Inquiries.** Immediately respond to inquiries of the Receiver pertaining to
6 G&K.
- 7 29. **Disclosure of Bank Accounts.** Immediately disclose to the Receiver all accounts of G&K
8 and client trust accounts, including all accounts at any bank, title company, escrow agent,
9 financial institution or brokerage firm which has possession, custody or control of any
10 assets or funds of G&K, or which maintains accounts of the Receiver, or which maintains
11 accounts where G&K's employees and agents in such capacity have signatory authority,
12 including but not limited to Girardi.
- 13 30. **Payment.** Pay all amounts due to the Receiver, Force 10, and the professionals retained
14 by the Receiver.
- 15 31. **Cooperation.** Employees, contractors, and Girardi shall fully cooperate with the Receiver
16 for the duration of the receivership, regardless of whether he is employed by or affiliated
17 with G&K, including but not limited to directing G&K's accounting department, office
18 manager, and any other current or former employees of G&K to likewise cooperate with
19 the Receiver.
- 20 32. **Enjoinder.** G&K and Girardi, and their owners, partners, employees, agents, managers,
21 attorneys (as all are applicable) and all persons and entities acting in concert with G&K or
22 Girardi are hereby enjoined and cannot:
- 23 a. Expend, disburse, remove, transfer, assign, sell, convey, devise, pledge, mortgage,
24 create a security interest in, encumber, conceal or in any manner whatsoever deal in
25 or dispose of the whole or any portion of G&K's assets, including but not limited to
26 its rights to attorney fees and costs from any client or in connection with any cases
27 in which G&K attorneys or resources were used;
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- b. Interfere in any way, directly or indirectly, with the Receiver’s performance of his/her duties and responsibilities and the exercise of his/her powers and/or doing any act which may impair, defeat, divert, prevent or prejudice the preservation of G&K’s assets or the proceeds thereof;
- c. Commit or permit any waste of G&K’s assets or any portion thereof, or suffer or commit or permit any act on G&K’s assets or any part thereof in violation of law;
- d. Conceal or withhold from the Receiver any G&K assets, including any client trust funds, real property, physical property, indirect or beneficial ownership interests, or funds;
- e. Do any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of G&K’s assets;
- f. Demand, collect, compromise, trade, receiver or spend any portion or proceeds of G&K’s assets; and
- g. Fail to pay over to the Receiver any monies whenever received, presently in the possession, custody or control of G&K, its owners, agents, representatives, servants, assigns and all those acting in concert therewith.

33. This injunction is effective upon CAL II’s posting of a bond in the amount of \$_____.

34. Nothing in this Order excuses or alters any ethical duties that G&K and/or G&K’s attorneys may have to their clients.

35. Upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, or other financial institutions shall cooperate with all reasonable requests of the Receiver or his agents relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of the receivership.

36. It is further ordered that this Temporary Restraining Order shall expire at 5:00 p.m. on _____, 2020.

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ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that G&K and Girardi appear on _____, 2020, at _____ a.m., in this Court, to show cause, if any:

1. Why the Receiver should not be confirmed to take possession, custody, and control of the real and personal property of G&K and to maintain and conserve the same with the powers and duties enumerated above and in accordance with the terms of this Order and until further Order of this Court; and
2. Why a preliminary injunction should not be granted enjoining and restraining G&K and Girardi, and their owners, partners, employees, agents, managers, attorneys (as all are applicable) and all persons and entities acting in concert with G&K or Girardi from directly or indirectly, receiving, collecting, diverting, or otherwise taking any of the receivership estate or any income, revenue or profit derived therefrom, expending, disbursing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in, encumbering, concealing, or in any manner whatsoever dealing in, disposing of or impairing the value of the whole or any part of the receivership estate, or any proceeds, issues, rents, or other income derived therefrom.
3. **IT IS FURTHER ORDERED** that a copy of this Order shall be served on G&K and Girardi no later than _____, 2020, at ____:____.m., and shall be served by _____, with proof of service to be filed with the Court no later than _____, 2020.
4. **IT IS FURTHER ORDERED** that any written opposition to the confirmation of the appointment of the receiver and the issuance of a preliminary injunction shall be filed and served on CAL II personally or by email no later than _____, 2020.
5. **IT IS FURTHER ORDERED** that any written reply to such opposition shall be filed and served on such opposing party personally or by email no later than _____, 2020.

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IT IS SO ORDERED.

Dated: _____, 2020

Honorable
Judge of the Superior Court