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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **Western Division**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 RALPH T. IANNELLI and ESSEX
18 CAPITAL CORPORATION,

19 Defendants.

Case No. 2:18-cv-05008-FMO-AFM

**CONSENT OF DEFENDANT RALPH
T. IANNELLI**

1 1. Defendant Ralph T. Iannelli (“Defendant”) acknowledges having been
2 served with the complaint in this action, enters a general appearance, and admits the
3 Court’s jurisdiction over Defendant and over the subject matter of this action.

4 2. Without admitting or denying the allegations of the complaint (except as
5 provided herein in paragraph 12 and except as to personal and subject matter
6 jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the
7 final Judgment in the form attached hereto (the “Final Judgment”) and incorporated
8 by reference herein, which, among other things:

9 (a) permanently restrains and enjoins Defendant from violations of:
10 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and
11 Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and
12 Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];

13 (b) orders Defendant to pay disgorgement in the amount of
14 \$9,960,000, plus prejudgment interest thereon in the amount of
15 \$454,828.21; and

16 (c) orders Defendant to pay a civil penalty in the amount of \$640,000
17 under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and
18 Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

19 3. Defendant acknowledges that any civil penalty paid pursuant to the Final
20 Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a)
21 of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
22 distribution is made, the civil penalty shall be treated as a penalty paid to the
23 government for all purposes, including all tax purposes. To preserve the deterrent
24 effect of the civil penalty, Defendant agrees that he shall not, after offset or reduction
25 of any award of compensatory damages in any Related Investor Action based on
26 Defendant’s payment of disgorgement in this action, argue he is entitled to, nor shall
27 he further benefit by, offset or reduction of such compensatory damages award by the
28 amount of any part of Defendant’s payment of a civil penalty in this action (“Penalty

1 Offset”). If the court in any Related Investor Action grants such a Penalty Offset,
2 Defendant agrees that he shall, within 30 days after entry of a final order granting the
3 Penalty Offset, notify the Commission’s counsel in this action and pay the amount of
4 the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission
5 directs. Such a payment shall not be deemed an additional civil penalty and shall not
6 be deemed to change the amount of the civil penalty imposed in this action. For
7 purposes of this paragraph, a “Related Investor Action” means a private damages
8 action brought against Defendant by or on behalf of one or more investors based on
9 substantially the same facts as alleged in the Complaint in this action.

10 4. Defendant agrees that he shall not seek or accept, directly or indirectly,
11 reimbursement or indemnification from any source, including but not limited to
12 payment made pursuant to any insurance policy, with regard to any civil penalty
13 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether
14 such penalty amounts or any part thereof are added to a distribution fund or otherwise
15 used for the benefit of investors. Defendant further agrees that he shall not claim,
16 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or
17 local tax for any penalty amounts that Defendant pays pursuant to the Final
18 Judgment, regardless of whether such penalty amounts or any part thereof are added
19 to a distribution fund or otherwise used for the benefit of investors.

20 5. Defendant waives the entry of findings of fact and conclusions of law
21 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

22 6. Defendant waives the right, if any, to a jury trial and to appeal from the
23 entry of the Final Judgment.

24 7. Defendant enters into this Consent voluntarily and represents that no
25 threats, offers, promises, or inducements of any kind have been made by the
26 Commission or any member, officer, employee, agent, or representative of the
27 Commission to induce Defendant to enter into this Consent.

28 8. Defendant agrees that this Consent shall be incorporated into the Final

1 Judgment with the same force and effect as if fully set forth therein.

2 9. Defendant will not oppose the enforcement of the Final Judgment on the
3 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of
4 Civil Procedure, and hereby waives any objection based thereon.

5 10. Defendant waives service of the Final Judgment and agrees that entry of
6 the Final Judgment by the Court and filing with the Clerk of the Court will constitute
7 notice to Defendant of its terms and conditions. Defendant further agrees to provide
8 counsel for the Commission, within thirty days after the Final Judgment is filed with
9 the Clerk of the Court, with an affidavit or declaration stating that Defendant has
10 received and read a copy of the Final Judgment.

11 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims
12 asserted against Defendant in this civil proceeding. Defendant acknowledges that no
13 promise or representation has been made by the Commission or any member, officer,
14 employee, agent, or representative of the Commission with regard to any criminal
15 liability that may have arisen or may arise from the facts underlying this action or
16 immunity from any such criminal liability. Defendant waives any claim of Double
17 Jeopardy based upon the settlement of this proceeding, including the imposition of
18 any remedy or civil penalty herein. Defendant further acknowledges that the Court's
19 entry of a permanent injunction may have collateral consequences under federal or
20 state law and the rules and regulations of self-regulatory organizations, licensing
21 boards, and other regulatory organizations. Such collateral consequences include, but
22 are not limited to, a statutory disqualification with respect to membership or
23 participation in, or association with a member of, a self-regulatory organization. This
24 statutory disqualification has consequences that are separate from any sanction
25 imposed in an administrative proceeding. In addition, in any disciplinary proceeding
26 before the Commission based on the entry of the injunction in this action, Defendant
27 understands that he shall not be permitted to contest the factual allegations of the
28 complaint in this action.

1 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.
2 § 202.5(e), which provides in part that it is the Commission’s policy “not to permit a
3 defendant or respondent to consent to a judgment or order that imposes a sanction
4 while denying the allegations in the complaint or order for proceedings,” and “a
5 refusal to admit the allegations is equivalent to a denial, unless the defendant or
6 respondent states that he neither admits nor denies the allegations.” As part of
7 Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant: (i)
8 will not take any action or make or permit to be made any public statement denying,
9 directly or indirectly, any allegation in the complaint or creating the impression that
10 the complaint is without factual basis; (ii) will not make or permit to be made any
11 public statement to the effect that Defendant does not admit the allegations of the
12 complaint, or that this Consent contains no admission of the allegations, without also
13 stating that Defendant does not deny the allegations; (iii) upon the filing of this
14 Consent, Defendant hereby withdraws any papers filed in this action to the extent that
15 they deny any allegation in the complaint; and (iv) stipulates solely for purposes of
16 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.
17 §523, that the allegations in the complaint are true, and further, that any debt for
18 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant
19 under the Final Judgment or any other judgment, order, consent order, decree or
20 settlement agreement entered in connection with this proceeding, is a debt for the
21 violation by Defendant of the federal securities laws or any regulation or order issued
22 under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C.
23 § 523(a)(19). If Defendant breaches this agreement, the Commission may petition
24 the Court to vacate the Final Judgment and restore this action to its active docket.
25 Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right
26 to take legal or factual positions in litigation or other legal proceedings in which the
27 Commission is not a party.

28 13. Defendant hereby waives any rights under the Equal Access to Justice

1 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other
2 provision of law to seek from the United States, or any agency, or any official of the
3 United States acting in his or her official capacity, directly or indirectly,
4 reimbursement of attorney's fees or other fees, expenses, or costs expended by
5 Defendant to defend against this action. For these purposes, Defendant agrees that
6 Defendant is not the prevailing party in this action since the parties have reached a
7 good faith settlement.

8 14. In connection with this action and any related judicial or administrative
9 proceeding or investigation commenced by the Commission or to which the
10 Commission is a party, Defendant (i) agrees to appear and be interviewed by
11 Commission staff at such times and places as the staff requests upon reasonable
12 notice; (ii) will accept service by mail or facsimile transmission of notices or
13 subpoenas issued by the Commission for documents or testimony at depositions,
14 hearings, or trials, or in connection with any related investigation by Commission
15 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of
16 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives
17 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil
18 Procedure and any applicable local rules, provided that the party requesting the
19 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the
20 then-prevailing U.S. Government per diem rates; and (v) consents to personal
21 jurisdiction over Defendant in any United States District Court for purposes of
22 enforcing any such subpoena.

23 15. Defendant agrees that the Commission may present the Judgment to the
24 Court for signature and entry without further notice.

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1 16. Defendant agrees that this Court shall retain jurisdiction over this matter
2 for the purpose of enforcing the terms of the Judgment.

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4 Dated: 4/30/2019

Ralph T. Iannelli
Ralph T. Iannelli

6 On April 30th, 2019, Ralph T. Iannelli, a person known to me,
7 personally appeared before me and acknowledged executing the foregoing Consent.

8 *Stde of NY*
9 *County of N.Y.*

Notary Public
Commission expires: *4-14-20*
Ronell S. Kirkley

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18 Approved as to form:

19 *J. Jorge deNeve*
20 J. Jorge deNeve
21 O'Melveny & Myers LLP
22 400 South Hope Street, 18th Floor
23 Los Angeles, CA 90071
24 *Counsel for Defendant Iannelli*

RONELL S. KIRKLEY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01K16301320
Qualified in Kings County
Commission Expires April 14th, 20

