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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

18 SECURITIES AND EXCHANGE
 19 COMMISSION,

20 Plaintiff,

21 v.

22 RALPH T. IANNELLI and ESSEX
 23 CAPITAL CORP.,

24 Defendants.

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

NOTICE OF MOTION AND MOTION
 OF RECEIVER, GEOFF WINKLER,
 FOR ORDER APPROVING AND
 AUTHORIZING PERFORMANCE OF
 SETTLEMENT AGREEMENT AND
 RELEASE; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF

[Declaration of Geoff Winkler; and
 [Proposed] Order submitted concurrently
 herewith]

Date: February 6, 2020
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 6, 2020 in Courtroom 6D of the
 above-entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Geoff
 Winkler, the Court-appointed permanent receiver (the "Receiver") for Essex Capital
 Corporation, and its subsidiaries and affiliates (collectively, the "Receivership
 Entities") will move the Court for an order approving the Receiver's settlement

1 agreement with Vivek Garipalli, Sequoia HealthCare Services, LLC, and Winthrop
2 Hayes in connection with the action styled Essex Capital Corp. v. Garipalli, et al.,
3 and currently pending in the United States District Court for the Southern District of
4 New York as case no. 1:17-cv-6347-JFK, and authorizing his performance of the
5 settlement.

6 This Motion is based on this Notice of Motion and Motion, the attached
7 Memorandum of Points and Authorities, the concurrently filed Declaration of Geoff
8 Winkler, the relevant Settlement Agreement and Release, the documents and
9 pleadings already on file in this action, and upon such further oral and documentary
10 evidence as may be presented at the time of hearing.

11 This motion is made following the conference of counsel pursuant to
12 L.R. 7-3, which commenced on December 15, 2019.

13
14 Dated: January 7, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

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17 By: /s/ Joshua A. del Castillo
18 JOSHUA A. DEL CASTILLO
19 Attorneys for Receiver
20 GEOFF WINKLER
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

By this Motion, Geoff Winkler, the Court-appointed permanent receiver (the "Receiver") for Essex Capital Corporation ("Essex"), and its subsidiaries and affiliates (collectively, with Essex, the "Receivership Entities"), seeks Court approval of a negotiated settlement with Vivek Garipalli, Sequoia HealthCare Services, LLC ("Sequoia"), and Winthrop Hayes (collectively, the "Defendants"), who are defendants in the Southern District of New York action styled Essex Capital Corp. v. Garipalli, et al., Case No. 1:17-cv-6347-JFK (the "Sequoia Action").

In accordance with the Court's prior orders, the Receiver has continued the prosecution of the Sequoia Action, which was commenced by Essex in the pre-receivership period. As reflected in the Receiver's prior submissions to this Court, the Receiver has sought either to: (1) prosecute Essex's claims for damages through trial, if necessary; or (2) reach an acceptable settlement beneficial for the Receivership Entities. The Receiver is pleased to report that his efforts have yielded a proposed settlement pursuant to which the Receivership Entities will recover nearly \$1 million in gross proceeds.

As detailed further herein, the Receiver has weighed the costs and benefits of continued litigation and has determined, in his reasonable business judgment, that the proposed settlement is in the best interest of the receivership estate because it will: (1) result in the near-term recovery of nearly \$1 million for the benefit of the Receivership Entities and their estate; and (2) avoid lengthy, costly, and uncertain litigation. The Receiver therefore respectfully submits that the settlement is appropriate and beneficial for the Receivership Entities, and requests that the Court authorize and approve the settlement, as memorialized by the concurrently submitted Settlement Agreement and Release ("Settlement Agreement"), a copy of

1 which is attached to the concurrently filed Declaration of Geoff Winkler (the
2 "Winkler Decl.") as **Exhibit A**.

3 **II. RELEVANT FACTUAL BACKGROUND.**

4 On or about June 5, 2018, the Plaintiff Securities and Exchange Commission
5 (the "Commission") filed its Complaint against Defendants Ralph T. Iannelli and
6 Essex. (ECF No. 1.) On December 21, 2018, the Court entered its Order Regarding
7 Preliminary Injunction and Appointment of a Permanent Receiver (the
8 "Appointment Order"), pursuant to which the Receiver was appointed and vested
9 with exclusive authority and control over the Receivership Entities, including with
10 respect to prosecuting claims intended to result in the recovery of funds for the
11 benefit of the Receivership Entities. (ECF No. 66.) The Court's later September 9,
12 2019 Order Regarding Permanent Injunction (ECF No. 113) reaffirmed the
13 Receiver's powers and duties.

14 At the time the Appointment Order was entered, the Sequoia Action was
15 already well underway, having recently survived a motion to dismiss. In its First
16 Amended Complaint, Essex alleged, among other things, that the Defendants
17 induced Essex to enter into a series of sale-leaseback agreements by providing
18 misleading financial statements, ultimately leading to significant damages. The
19 Defendants deny Essex's allegations.

20 Upon appointment, and with the Court's permission, the Receiver retained
21 special litigation counsel to continue the prosecution of the Sequoia Action, and
22 engaged in strategic discovery and negotiations, culminating in an agreement to
23 settle the litigation, subject to Court approval, on the terms reflected in the
24 Settlement Agreement. (See Winkler Decl. at ¶ 4, Ex. A.) Pursuant to the terms of
25 the Settlement Agreement, Sequoia has agreed to pay the Receiver \$925,000, in
26 exchange for the dismissal of the Sequoia Action, including a dismissal of all
27 parties, and a mutual release. (Id.)

28

1 The Receiver has conducted an extensive review of thousands of documents
2 relating to the claims alleged in the Sequoia Action. While the Receiver believes
3 that the claims were alleged and prosecuted by Essex in good faith, based upon the
4 results of discovery conducted to date, there is a material risk that insufficient
5 evidence to prove fraud against the Defendants can be developed. (Winkler Decl. at
6 ¶ 5.) The further pursuit of claims will require extensive additional discovery,
7 potentially at significant expense to the Receivership Entities. (Id.) Moreover,
8 based on the Receiver's review of the currently available documents, the \$925,000
9 settlement payment contemplated in the Settlement Agreement reflects a significant
10 percentage of the provable damages that Essex alleges it suffered. (Id.) Pursuing
11 diminishing returns does not reflect an appropriate disposition of limited
12 receivership estate resources. Accordingly, the Receiver believes that the payment
13 contemplated in the Settlement Agreement reflects an appropriate compromise,
14 sufficient to adequately compensate the Receivership Entities. (Id.) The Receiver
15 therefore respectfully requests that the Court approve the settlement as
16 memorialized by the Settlement Agreement and authorize him to perform his
17 agreed-upon obligations thereunder.

18 **III. ARGUMENT.**

19 A federal equity receiver's power to compromise claims is subject to court
20 approval. As noted by the Ninth Circuit Court of Appeals in SEC v. Hardy,
21 803 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an
22 equity receivership and to determine the appropriate action to be taken in the
23 administration of the receivership is extremely broad." With regard to settlements
24 entered into by a federal equity receiver, the Court's supervisory role includes
25 reviewing and approving those settlements in light of a federal policy generally
26 favoring settlements before trial. See Fed. R. Civ. P. 16(c), Advisory Committee
27 Notes.

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1 Courts often look to bankruptcy for guidance in the administration of
 2 receivership estates. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 745
 3 (9th Cir. 2005); SEC v. Am. Capital Inv., Inc., 98 F.3d 1133, 1140 (9th Cir. 1996);
 4 SEC v. Basic Energy & Affiliated Res., 273 F.3d 657, 665 (6th Cir. 2001); see also
 5 Local Civil Rule 66-8 ("a receiver shall administer the estate as nearly as possible in
 6 accordance with the practice in the administration of estates in bankruptcy"). A
 7 bankruptcy court may approve a compromise of claims asserted by or against the
 8 estate if the compromise is "fair and equitable." Woodson v. Fireman's Fund
 9 Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). The approval of a
 10 proposed compromise negotiated by a court-appointed fiduciary "is an exercise of
 11 discretion that should not be overturned except in cases of abuse leading to a result
 12 that is neither in the best interest of the estate nor fair and equitable for the
 13 creditors." In re MGS Mktg., 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

14 The Court has great latitude in approving compromises. In passing on the
 15 proposed compromise, the Court should consider the following:

- 16 a. The probability of success in litigation;
- 17 b. The difficulties, if any, to be encountered in the
 matter of collection;
- 18 c. The complexity of the litigation involved and the
 expense, inconvenience, and delay necessarily
 19 attending; and
- 20 d. The paramount interest of the creditors and a proper
 deference to their reasonable views in the premises.

21 In re Woodson, 839 F.2d at 620.

22 Here, the Receiver has weighed the costs and benefits of litigation and
 23 determined, in his reasonable business judgement, that the settlement, as
 24 memorialized by the Settlement Agreement, is in the best interests of the
 25 Receivership Entities. As noted above, the Receiver and his professionals have
 26 reviewed thousands of documents in connection with the Sequoia Action and, while
 27 Essex's claims appear to have been brought and prosecuted in good faith, there may
 28 be insufficient evidence to demonstrate that, at least, Defendants Garipalli and

1 Hayes committed fraud. These circumstances, in turn, reduce the probability of
2 success. In order to continue prosecuting the claims, the Receiver would need to
3 conduct substantial additional discovery, at significant cost and, even then, the
4 likelihood of prevailing would remain uncertain.

5 Given this risk and uncertainty, the potentially significant delay and expense
6 of further litigation, and the immediate-term benefit to the estate of the Receivership
7 Entities from their anticipated receipt of the \$925,000 settlement payment
8 contemplated here, the Receiver has concluded, in his reasonable business
9 judgment, that the proposed settlement, as reflected in the Settlement Agreement, is
10 in the best interests of the Receivership Entities, including their investors and
11 creditors. He therefore requests that this Court enter an order approving the
12 settlement, as memorialized in the Settlement Agreement, and authorizing the
13 Receiver to perform his agreed-upon obligations thereunder.

14 **IV. CONCLUSION.**

15 Based on the foregoing, the Receiver respectfully requests an order approving
16 the settlement, as memorialized in the Settlement Agreement, and authorizing the
17 Receiver to perform his agreed-upon obligations thereunder.

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19 Dated: January 7, 2020

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By: /s/ Joshua A. del Castillo

JOSHUA A. DEL CASTILLO
Attorneys for Receiver
GEOFF WINKLER

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PROOF OF SERVICE

Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

On **January 7, 2020**, I caused to be served the document entitled: **NOTICE OF MOTION AND MOTION OF RECEIVER, GEOFF WINKLER, FOR ORDER APPROVING AND AUTHORIZING PERFORMANCE OF SETTLEMENT AGREEMENT AND RELEASE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on all the parties to this action addressed as stated on the attached service list.

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

OVERNIGHT DELIVERY: I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **January 7, 2020** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz

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SERVICE LIST

Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

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