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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

Ctrm: 6D
 Judge Hon. Fernando M. Olguin

STIPULATION TO AUTHORIZE
 RECEIVER'S DISGORGEMENT
 EFFORTS AND ESTABLISH
 DISGORGEMENT PROCEDURES

[[Proposed] Order on Stipulation
 submitted concurrently herewith]

25 **STIPULATION**

26 The following Stipulation to Authorize Receiver's Disgorgement Efforts and
 27 Establish Disgorgement Procedures (the "Stipulation") is made by and between
 28 Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for
 Defendant Essex Capital Corporation ("Essex") and its subsidiaries and affiliates
 (collectively, the "Receivership Entities" or "Entities"), and the Plaintiff Securities
 and Exchange Commission (the "Commission") (collectively, the Receiver and the
 Commission are referred to herein as the "Parties"), by and through their respective
 counsel of record, and with respect to the following facts:

1 A. On December 21, 2018, this Court entered its Order Regarding
2 Preliminary Injunction and Appointment of a Permanent Receiver (the
3 "Appointment Order") (ECF No. 66), pursuant to which the Receiver was vested
4 with exclusive authority and control over the Receivership Entities and their assets
5 ("Receivership Assets" or "Assets"). On September 9, 2019, the Court entered its
6 Order Regarding Permanent Injunction (the "Permanent Injunction") (ECF
7 No. 113), which reaffirmed the authority initially conveyed upon the Receiver via
8 the Appointment Order.

9 B. Among other things, the Appointment Order authorized, empowered,
10 and directed the Receiver to: (1) take exclusive authority and control over all
11 Receivership Assets; (2) conduct such investigation and discovery as necessary to
12 identify and locate outstanding Receivership Assets; and (3) preserve and prevent
13 the dissipation of Receivership Assets. In connection with these duties, the Receiver
14 has reviewed more than 500,000 pages of materials, reflecting hundreds of
15 thousands of individual transactions, relating to the business and financial activities
16 of the Receivership Entities. This effort has enabled the Receiver to identify and
17 quantify a significant portion of those transactions believed to relate to recoverable
18 Assets.

19 C. On the basis of his review, the Receiver has confirmed that the
20 operations of the Receivership Entities were not profitable, and were unsustainable
21 absent ongoing infusions of new funds from investors or lenders. Essex's payments
22 of so-called returns on investments to certain investors were funded largely by
23 money obtained from new investors, or from new borrowing. The Receiver has
24 concluded and reported to the Court that the activities of the Receivership Entities
25 bear the hallmarks of a Ponzi investment scheme.

26 D. Via his detailed analysis and accounting, the Receiver has confirmed
27 that, as in most Ponzi schemes, some Receivership Entity investors were paid more
28 than the aggregate amounts they invested in the Entities ("Net Winners"), while

1 others lost money on their investments ("Net Losers"). The Receiver has
2 determined, in his reasonable business judgment, that in order to recover and return
3 as much as possible to the creditors of the Entities, including Net Losers, it is
4 necessary and appropriate to pursue recovery of profits paid to the Net Winners.

5 E. The Receiver's detailed investigation and accounting of the
6 Receivership Entities has enabled him to identify at least fifty-one (51) apparent Net
7 Winners, the aggregate amount of profit actually paid out to whom, on a money-
8 in/money-out basis, appears to exceed \$25 million.

9 F. Based upon the Receiver's experience, and a comprehensive review of
10 materials from comparable federal equity receiverships in this district, the Receiver
11 has concluded that average recoveries from the Net Winners are unlikely to reach
12 100% of each Net Winner's individual respective profits ("Profit Amount").
13 Accordingly, the Receiver believes that procedures tailored to minimize the costs of
14 pursuing claims against Net Winners are critical, and will maximize funds
15 (including in the form of recoveries from Net Winners) available for distribution to
16 Net Losers and other entity creditors whose claims for reimbursement are ultimately
17 allowed by the Court. In order to minimize the cost of securing authority for the
18 Receiver to proceed with his disgorgement efforts, the Receiver and the
19 Commission have agreed to stipulate to the Receiver's authority and proposed
20 procedures, rather than impose the cost and delay of motions practice upon the
21 receivership estate.

22 G. In consultation with the Commission, the Receiver has developed the
23 following proposed procedures, which are designed to: (i) create an efficient and
24 effective system of resolving the Receiver's claims for the recovery of Profit
25 Amounts from Net Winners, either via settlement or litigation; (ii) allow the
26 Receiver to act promptly to maximize the recoveries from Net Winners while
27 safeguarding Net Winners' due process rights; and (iii) conserve judicial and
28 receivership estate resources.

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STIPULATION AND AGREEMENT

Accordingly, and in consideration of the foregoing, the Parties hereby STIPULATE and AGREE as follows:

I. SETTLEMENTS.

1. The Receiver shall be authorized to pursue the recovery of Profit Amounts from Net Winners. To that end, he shall initially provide Net Winners with an opportunity and incentive to settle claims for the recovery of Profit Amounts prior to incurring the cost and delay of litigation. Accordingly, the Receiver will send demand letters to all Net Winners whom he has determined to pursue for reimbursement of Profit Amounts which shall: (a) identify the Receiver's calculation of the Net Winner's Profit Amount; (b) state the Receiver's intention to pursue claims against the Net Winner to recover the Profit Amount, along with a brief description of the basis for such claims; and (c) offer to settle his claims prior to the commencement of litigation for 60% of the Profit Amount, if payment is made in a lump sum, and within ninety (90) days of demand, or 67.5% of the Profit Amount if payment is made over time, not to exceed twelve (12) monthly installments. The Receiver's demand letter will also advise that such preliminary offers to settle shall expire sixty (60) days after its transmittal date. The Receiver shall have discretion to fashion settlement agreements and releases as he deems appropriate, in his reasonable business judgment.

2. In order to accept any pre-litigation settlement offer by the Receiver, a Net Winner must: (a) confirm, in writing within sixty (60) days of the transmittal of the Receiver's demand letter, his or her intent to settle; (b) execute a settlement agreement with the Receiver, along with a stipulated judgment in the amount of his or her total Profit Amount (to be provided by the Receiver), and return both the executed settlement agreement and stipulated judgment to the Receiver within one hundred and five (105) days of the transmittal of the Receiver's initial demand letter.

1 Settlement agreements executed in accordance with these procedures will be
2 effective immediately, without further Court approval.

3 3. Stipulated judgments will be held by the Receiver and not filed with the
4 Court or otherwise sought to be enforced, provided a settling Net Winner timely
5 makes all payments required under the applicable settlement agreement. If a settling
6 Net Winner defaults on any payment, or otherwise fails to timely make all required
7 payments, and does not cure such default within ten (10) calendar days of such
8 default, the Receiver, in his sole discretion, may file a complaint in this Court
9 against the Net Winner together with the stipulated judgment, and promptly request
10 entry of the stipulated judgment.

11 4. In the event that the Receiver's initial settlement offer lapses, either by
12 failure of a Net Winner to respond or otherwise, the Receiver, in his sole discretion
13 and exercising his reasonable business judgment, may file a complaint in this Court
14 against any Net Winner, subject to the litigation procedures described below. In the
15 event that a Net Winner seeks to settle with the Receiver after a complaint is filed,
16 but before litigation is concluded, the 60% and 67.5% settlement thresholds above
17 will be raised to 80% and 90%, respectively, as will be stated in the demand letter.

18 **II. LITIGATION.**

19 5. As noted above, in the event that the Receiver's initial settlement offer
20 lapses, either by failure of a Net Winner to respond or otherwise, then the Receiver
21 may file a complaint against the Net Winner, without further order of the Court.

22 6. In order to minimize the administrative expenses associated with any
23 claims by the Receiver against Net Winners, and to maximize judicial efficiency, all
24 actions relating to such claims shall be prosecuted in this Court, which may exercise
25 ancillary and supplemental jurisdiction over such claims pursuant to 28 U.S.C.
26 §§ 1345 and 1367(a). Accordingly, in connection with the filing of any action
27 against a Net Winner in this Court, the Receiver shall promptly file a notice of
28 related action with each complaint, in compliance with L.R. 83-1.3.1.

1 7. This Court shall retain jurisdiction over the above-entitled action,
2 including in connection with the receivership created pursuant to the Appointment
3 Order and reaffirmed by the Permanent Injunction, and further including with
4 respect to any disputes or other matters that arise in connection with this Stipulation
5 and any Order thereon.

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SO STIPULATED.

Dated: March 25, 2020

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

By: /s/ Joshua A. del Castillo
JOSHUA A. DEL CASTILLO
Attorneys for Receiver
GEOFF WINKLER

Dated: March 25, 2020

U.S. SECURITIES AND EXCHANGE
COMMISSION

By: /s/ Douglas M. Miller
DOUGLAS M. MILLER
Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION

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 **March 26, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **STIPULATION TO AUTHORIZE RECEIVER'S DISGORGEMENT EFFORTS AND ESTABLISH DISGORGEMENT PROCEDURES.**

- 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 **March 26, 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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