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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RALPH T. IANNELLI and ESSEX
CAPITAL CORP.,

Defendants.

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

Ctrm: 6D

Judge Hon. Fernando M. Olguin

[PROPOSED] ORDER GRANTING
STIPULATION TO AUTHORIZE
RECEIVER'S DISGORGEMENT
EFFORTS AND ESTABLISH
DISGORGEMENT PROCEDURES

ORDER

Before the Court is the Stipulation to Authorize Receiver's Disgorgement Efforts and Establish Disgorgement Procedures (the "Stipulation") by and between Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for Defendant Essex Capital Corporation and its subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities"), and the Plaintiff Securities and Exchange Commission.

The Stipulation having been considered, and good cause appearing therefor, this Court orders as follows:

1. The Stipulation is granted, in its entirety;

1 2. The proposed procedures set forth in the Stipulation are approved as
2 follows:

3 **I. SETTLEMENTS.**

4 A. The Receiver shall be authorized to pursue the recovery of profits
5 ("Profit Amounts") from those Receivership Entity investors who were paid more
6 than the aggregate amounts they invested in the Entities ("Net Winners"). To that
7 end, the Receiver shall provide Net Winners with an opportunity and incentive to
8 settle claims for the recovery of Profit Amounts prior to incurring the cost and delay
9 of litigation. Specifically, the Receiver shall send demand letters to all Net Winners
10 whom he has determined to pursue for reimbursement of Profit Amounts, which
11 demand letters shall: (a) identify the Receiver's calculation of the Net Winner's
12 Profit Amount; (b) state the Receiver's intention to pursue claims against the Net
13 Winner to recover the Profit Amount, along with a brief description of the basis for
14 such claims; and (c) offer to settle the Receiver's claims prior to the commencement
15 of litigation for 60% of the Profit Amount, if payment is made in a lump sum, and
16 within ninety (90) days of demand, or 67.5% of the Profit Amount, if payment is
17 made over time, not to exceed twelve (12) monthly installments. The Receiver's
18 demand letter shall also advise that such preliminary offers to settle shall expire
19 sixty (60) days after the transmittal date of the letter. The Receiver shall have
20 discretion to fashion settlement agreements and releases in accordance with his
21 reasonable business judgment.

22 B. In order to accept any pre-litigation settlement offer by the Receiver, a
23 Net Winner must: (a) confirm, in writing within sixty (60) days of the transmittal of
24 the Receiver's demand letter, his or her intent to settle; (b) execute a settlement
25 agreement with the Receiver, along with a stipulated judgment in the amount of his
26 or her total Profit Amount (to be provided by the Receiver), and return both the
27 executed settlement agreement and stipulated judgment to the Receiver within one
28 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 C. 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 D. 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 shall be raised to 80% and 90%, respectively, as must be stated in the Receiver's
18 demand letter.

19 **II. LITIGATION.**

20 E. In the event that the Receiver's initial settlement offer lapses, either by
21 failure of a Net Winner to respond or otherwise, then the Receiver may file a
22 complaint against the Net Winner, without further order of the Court.

23 F. In order to minimize the administrative expenses associated with any
24 claims by the Receiver against Net Winners, and to maximize judicial efficiency, all
25 actions relating to such claims shall be prosecuted in this Court, which may exercise
26 ancillary and supplemental jurisdiction over such claims pursuant to 28 U.S.C.
27 §§ 1345 and 1367(a). Accordingly, in connection with the filing of any action
28

1 against a Net Winner in this Court, the Receiver shall promptly file a notice of
2 related action with each complaint, in compliance with L.R. 83-1.3.1.

3 G. This Court shall retain jurisdiction over the above-entitled action,
4 including in connection with the receivership created pursuant to the Order
5 Regarding Preliminary Injunction and Appointment of a Permanent Receiver (ECF
6 No. 66) and reaffirmed by the Order Regarding Permanent Injunction (ECF
7 No. 113), and with respect to any disputes or other matters that arise in connection
8 with this Order.

9 Effective immediately upon the entry of this Order, the Receiver is authorized
10 to commence his disgorgement and recovery efforts, as set forth in the Stipulation
11 and herein.

12
13 **SO ORDERED.**

14
15 Dated: _____

16 Hon. Fernando M. Olguin
17 Judge, United States District Court
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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 **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: **[PROPOSED] ORDER GRANTING 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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