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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
 STIPULATION FOR ORDER:
 (1) ESTABLISHING CLAIMS
 PROCEDURES; AND (2) SETTING
 CLAIMS BAR DATE

[[Proposed] Order on Stipulation
 submitted concurrently herewith]

Ctrm: 6D
 Judge Hon. Fernando M. Olguin

25 **STIPULATION**

26 The following Stipulation for Order: (1) Establishing Claims Procedures; and
 27 (2) Setting Claims Bar Date (the "Stipulation") is made by and between Geoff
 28 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 "Commission") (collectively, the Receiver and the Commission
 are referred to herein as the "Parties"), by and through their respective counsel of
 record, 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 (ECF No. 113), which reaffirmed the
7 authority initially conveyed upon the Receiver via the Appointment Order.

8 B. Among other things, the Appointment Order authorized, empowered,
9 and directed the Receiver to: (1) assume exclusive authority and control over all
10 Receivership Assets; (2) conduct an investigation and accounting of the Entities'
11 Assets and financial activities in order to, among other things, identify and locate
12 outstanding Receivership Assets; and (3) marshal and recover all available Assets
13 for the benefit of the Receivership Entities and their investors and creditors. To that
14 end, the Receiver has diligently pursued his duties under the Appointment Order by
15 taking those steps that he believes are necessary and appropriate to identify,
16 marshal, and recover all known Receivership Assets.

17 C. In addition, the Receiver has completed an accounting of the business
18 and financial activities of the Entities, including a money-in/money-out ("MIMO")
19 accounting of their financial transactions, with a particular emphasis on those
20 transactions reflecting funds raised from and paid out to investors in, and other
21 creditors of, the Receivership Entities.

22 D. The Receiver's investigations and accounting efforts have enabled him
23 to identify at least 156 Entity investors and numerous potential non-investor
24 creditors. Collectively, these investor and non-investor creditors of the Entities
25 appear to have suffered net losses from their investments in, or contributions to, the
26 Entities (collectively, sometimes referred to herein as the "Net Losers") in the
27 aggregate amount of approximately \$40 million. Moreover, on the basis of his
28 MIMO analysis, which involved a review of more than 500,000 pages of materials,

1 reflecting hundreds of thousands of individual transactions, the Receiver believes he
2 has identified the amounts outstanding and owed by the Entities to an overwhelming
3 majority of the Net Losers.

4 E. As of the date of this Stipulation, the Receiver holds approximately
5 \$3.175 million for the benefit of the Receivership Entities and their investors and
6 creditors, and expects this amount to increase given his continued efforts to marshal,
7 recover, and monetize available Assets, including profits paid to investors who
8 received more from the Entities, on a MIMO basis, than they invested in or
9 contributed to the Entities. While the Receiver's Asset recovery efforts remain
10 ongoing, he believes that it is now appropriate to commence a claims process in
11 anticipation of making distributions of recovered funds to investors and creditors
12 with allowed claims against the Receivership Entities.

13 F. Accordingly, and in consultation with the Commission, the Receiver
14 has developed the following proposed procedures for noticing, reviewing, and
15 processing claims against the Receivership Entities, which are designed to create an
16 efficient and expedient claims process for the beneficial administration of the estate
17 of the Receivership Entities (the "Receivership Estate") and their investors and
18 creditors. To be clear, while the proposed claims procedures will facilitate future
19 distributions, if ordered by the Court, the claims procedures do not establish a
20 distribution plan, which will be submitted to the Court for approval under separate
21 cover, upon the Receiver's completion of the claims process contemplated herein.

22 **STIPULATION AND AGREEMENT**

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

25 **I. INVESTOR CLAIMS.**

26 1. The Receiver will send a letter (the "Claim Letter") to each known Net
27 Loser reflecting the Receiver's calculation of the Net Loser's claim for
28 reimbursement (the "Claim") against the Receivership Entities, as reflected in the

1 Receiver's records. This amount (the "Claim Amount") will be the result of the
2 Receiver's MIMO calculations, and shall not include accrued interest, late fees,
3 contract or other damages, attorneys' fees, or similar contingent, consequential, or
4 unliquidated claims. The Claim Letter will further inform the Net Loser that, if
5 he/she/it disputes the Receiver's calculated Claim Amount, the Net Loser must
6 submit a completed Claim Form (as defined, below) to the Receiver, along with any
7 documentation in support of the Net Loser's position and calculation of his/her/its
8 Claim, by the Claims Bar Date (as defined below). **Any prospective claimant,**
9 **including a Net Loser, who does not return a completed Claim Form to the**
10 **Receiver on or before the Claims Bar Date will be deemed to have accepted and**
11 **agreed to the Receiver's valuation of his/her/its Claim, in the amount of the**
12 **Claim Amount associated with that Claim.**

13 **II. CLAIM FORM.**

14 2. The Receiver's Claim Letters will also include, as an attachment, a
15 form (the "Claim Form") by which any prospective claimant, including any Net
16 Loser, who disputes the Receiver's calculation of his/her/its Claim Amount may
17 provide information to the Receiver regarding that dispute, including his/her/its
18 valuation of his/her/its Claim, and any associated supporting documentation, as
19 addressed further, below. A copy of the Claim Form will also be available on the
20 Receiver's website for this matter, www.essex-receivership.com.

21 3. Prospective claimants who do not receive a Claim Letter, either
22 because the Receiver does not believe them to be Net Losers or otherwise, or who
23 receive the Claim Letter but dispute the Receiver's calculation of their Claim
24 Amount, shall be required to complete the Claim Form by providing specific
25 information about the nature and amount of their prospective Claim. Further, such
26 claimants will be required to submit adequate supporting documentation at the time
27 their Claim Forms are returned to the Receiver, in order to evidence the validity and
28 extent of each purported Claim.

1 **III. SUBMISSION OF CLAIM FORM.**

2 4. All prospective claimants, including Net Losers, shall be permitted to
3 submit their Claim Forms to the Receiver by mail or email, on or before the Claims
4 Bar Date. Prospective claimants submitting a Claim Form by email will receive an
5 acknowledgement of receipt by email, and claimants submitting a Claim Form by
6 mail can request a date-stamped copy acknowledging receipt.

7 **IV. CLAIMS BAR DATE.**

8 5. The Receiver shall notify all prospective claimants, by posting on his
9 website, www.essex-receiversip.com, a notice of the deadline (the "Claims Bar
10 Date") by which all prospective claimants, including Net Losers, who dispute the
11 Receiver's valuation of their prospective Claims, including his calculation of their
12 Claim Amounts, must return their completed Claim Forms, along with all available
13 documentation supporting their valuation of their prospective Claims, to the
14 Receiver. **Any prospective claimant, including a Net Loser, who does not
15 return a completed Claim Form to the Receiver on or before the Claims Bar
16 Date will be deemed to have accepted and agreed to the Receiver's valuation of
17 his/her/its Claim, in the amount of the Claim Amount associated with that
18 Claim.**

19 6. The Claims Bar Date shall be established as the date sixty (60) calendar
20 days from the date of the Receiver's first publication of notice of the Claims Bar
21 Date on his website, www.essex-receivership.com, following receipt of an order
22 from this Court approving this Stipulation.

23 **V. ADDITIONAL NOTICE BY PUBLICATION.**

24 7. The Receiver will provide notice to all prospective claimants of the
25 above-described claims process and the Claims Bar Date, by email (for all known
26 investor and other Entity creditor email addresses) and by publishing a one-time
27 notice in a publication of wide circulation in the geographic area of the Entities'
28 principal place of business, Santa Barbara, California. Such notice shall include a

1 referral to the Receiver's website, www.essex-receivership.com, where claims-
2 related materials may be viewed and downloaded. The combination of email and
3 published notice, in addition to posting on the Receiver's website, will result in
4 adequate notice, without undue expenditure of limited Receivership Estate
5 resources.

6 **VI. DISPUTED CLAIMS REVIEW PROCEDURE.**

7 8. **Any prospective claimant, including a Net Loser, who does not**
8 **return a completed Claim Form to the Receiver on or before the Claims Bar**
9 **Date will be deemed to have accepted and agreed to the Receiver's valuation of**
10 **his/her/its Claim, in the amount of the Claim Amount associated with that**
11 **Claim.**

12 9. For all other Claims, the Receiver will evaluate all Claim Forms and
13 supporting documents received by the Claims Bar Date, and compare them against
14 the records of the Receivership Entities, the results of his investigation and
15 accounting, and other relevant materials, and make a determination regarding the
16 recommended treatment of each Claim.

17 10. Claims will be evaluated on a strict MIMO basis, across the
18 Receivership Entities as a whole. Accordingly, Claims will be determined based on
19 each investor's (or creditor's) actual net investment in, or net monetary contribution
20 to, the Receivership Entities. The process will thus ensure that no investor or
21 creditor receives an inequitable benefit as a consequence of the combinations of
22 Entities in which their money was invested, or to which they made a monetary
23 contribution or contributions.

24 11. In the event that the Receiver does not accept a particular claimant's
25 asserted Claim or Claim Amount, the Receiver will provide written notice to the
26 claimant of the objection and the Receiver's revised, proposed Claim Amount, if
27 any. The Receiver will attempt to confer with the claimant in an effort to resolve
28 the dispute. Differences that cannot be resolved directly between the Receiver and

1 the claimant will be submitted to the Court for determination by motion, at such
2 time as the Receiver makes his recommendations to the Court regarding the
3 equitable treatment of Claims.

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SO STIPULATED.

Dated: April 20, 2020

ALLEN MATKINS LECK GAMBLE
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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: April 20, 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 **April 20, 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 FOR ORDER; (1) ESTABLISHING CLAIMS PROCEDURES; AND (2) SETTING CLAIMS BAR DATE.**

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 **April 20, 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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