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 14 GEOFF WINKLER

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;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF

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

Date: July 16, 2020
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

25 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

26 **PLEASE TAKE NOTICE** that on July 16, 2020 in Courtroom 6D of the
 27 above-entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Geoff
 28 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 Geoffrey and Annette Grant and Amagansett Partners, LLC, and
2 authorizing his performance of the settlement.

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

8 This motion is made following the conference of counsel pursuant to
9 L.R. 7-3, which commenced on June 5, 2020.

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Dated: June 11, 2020

ALLEN MATKINS LECK GAMBLE
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DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

By: /s/ David R. Zaro

DAVID R. ZARO
Attorneys for Receiver
GEOFF WINKLER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 By this Motion, Geoff Winkler, the Court-appointed permanent receiver (the
4 "Receiver") for Essex Capital Corporation ("Essex"), and its subsidiaries and
5 affiliates (collectively, with Essex, the "Receivership Entities"), seeks Court
6 approval of a negotiated settlement with Geoffrey and Annette Grant (collectively,
7 the "Grants") and Amagansett Partners, LLC ("Amagansett"), in order to resolve,
8 fully and completely, the parties' various prospective claims against one another
9 arising from and in connection with the Grants' investments in the Receivership
10 Entities and the creation of Amagansett as a putative means of satisfying
11 outstanding Essex obligations to the Grants.

12 As detailed herein, the Receiver has weighed the costs and benefits of
13 prospective litigation with the Grants and Amagansett and has determined, in his
14 reasonable business judgment, that the proposed settlement is in the best interest of
15 the receivership estate because it will: (1) result in the near-term recovery of
16 \$150,000 for the benefit of the Receivership Entities and their estate; and (2) avoid
17 potentially lengthy, costly, and uncertain litigation. The Receiver therefore
18 respectfully submits that the settlement is appropriate and beneficial for the
19 Receivership Entities, and requests that the Court authorize and approve the
20 settlement, as memorialized by the concurrently submitted Settlement Agreement, a
21 copy of which is attached to the concurrently filed Declaration of Geoff Winkler
22 (the "Winkler Decl.") as **Exhibit A**.

23 **II. RELEVANT FACTUAL BACKGROUND.**

24 On or about June 5, 2018, the Plaintiff Securities and Exchange Commission
25 (the "Commission") filed its Complaint against Defendants Ralph T. Iannelli and
26 Essex. (ECF No. 1.) On December 21, 2018, the Court entered its Order Regarding
27 Preliminary Injunction and Appointment of a Permanent Receiver, pursuant to
28 which the Receiver was appointed and vested with exclusive authority and control

1 over the Receivership Entities, including with respect to prosecuting claims intended
2 to result in the recovery of funds for the benefit of the Receivership Entities.
3 (ECF No. 66.) The Court's later September 9, 2019 Order Regarding Permanent
4 Injunction (ECF No. 113) reaffirmed the Receiver's powers and duties.

5 In partial satisfaction of his duties, the Receiver undertook a detailed review
6 and analysis of the business and financial activities of the Receivership Entities,
7 including in connection with payments received from and paid to investors.
8 (Winkler Decl. ¶ 2.) In the course of this investigation, the Receiver conducted a
9 "money-in / money-out" or "MIMO" accounting of funds received from and paid to
10 investors, in order to determine which Receivership Entity investors profited from
11 their investments, and which had prospective claims against the estate of the
12 Receivership Entities resulting from losses on investment. (Id.)

13 The facts relating to the Grants and Amagansett are somewhat unique. The
14 Grants' investments in the Receivership Entities commenced in or around October
15 2008, and lasted through approximately April 2018. (Id. at ¶ 3.) At certain points in
16 their investment history, the Grants elected to roll payable investments over into
17 new investments, with promised interest added to the balance of the new
18 investments, occasionally in the form of a completely new investment vehicle. (Id.)
19 Ultimately, and by the time the Receiver was appointed, the Grants claimed to be
20 owed more than \$11.8 million. (Id.) Amagansett was created in or around March
21 2018, apparently in order to make payments to the Grants in connection with
22 amounts putatively owed on their investments.¹ (Id.) Amagansett's Operating
23

24 ¹ The formation of Amagansett appears to be the second time that Essex's
25 purported obligations to the Grants were restructured. (Winkler Decl. ¶ 4.) The
26 Grants have claimed that Essex owed them approximately \$11.8 million as of
27 July 2017. (Id.) As part of a workout of this debt, Essex provided the Grants
28 with \$1.8 million in cash and securities, plus \$10 million in promissory notes,
including: (1) a \$5 million note due in 2018 ("Note 1"); (2) a \$2.5 million note
due in 2019; and (3) a \$2.5 million note due in 2020. Separately, the records
reflect that the Grants loaned Essex \$850,000 via two independent promissory
notes: one for \$500,000, due in July 2018 ("Note 2"), and one for \$350,000, due
in July 2019 ("Note 3"). (Id.)

1 Agreement, as amended, provided, among other things, that (1) Essex was to
2 contribute illiquid securities valued at more than \$4.4 million to the LLC, in
3 exchange for 510 Class B Units of the LLC; and (2) the Grants were to contribute
4 Note 1, Note 2, and Note 3, collectively valued under the terms of the Operating
5 Agreement at \$5.85 million, in exchange for 490 Class A Units of the LLC. (Id. at
6 ¶ 5) The amended Operating Agreement called for the cancellation of all three notes
7 and a corresponding reduction of Essex's Amagansett capital account to \$0. (Id.)
8 The Grants' capital contribution was to be paid first, with any additional proceeds
9 being distributed as follows: 75% to Essex and 25% to the Grants. Additionally, the
10 Grants agreed to extend two (2) of the notes addressed in footnote 1, above, by one
11 (1) year each and to reduce, retroactively, the interest rate to 5% per annum on each
12 note. (Id.)

13 While Amagansett may have been intended to facilitate payments from Essex
14 to the Grants, the nature and history of the Grants' investments in the Receivership
15 Entities, paired with, in some instances, inconsistent and irreconcilable records
16 relating to those investments, have made it uniquely difficult for the Receiver to
17 develop a definitive accounting and valuation of the Grants' investments, and
18 Essex's resultant obligations to the Grants, if any. (Id. at ¶ 6.) A detailed review of
19 the Receivership Entities' records, along with records produced to the Receiver by
20 the Grants, suggests that, the manner in which the Grants are credited for certain
21 investments, when, and in what amounts can yield substantially differing
22 conclusions. (Id.) Under one interpretation of the accounting records and the
23 transactional documents, the Grants can be characterized as having experienced a
24 *net loss* on their investments in the Receivership Entities, and therefore may assert a
25 claim for reimbursement against the estate of the Receivership Entities in the
26 amount of that loss. (Id.) Likewise, a different, plausible interpretation shows that
27 the Grants profited from their investments, making them net winners in the
28 enterprise. (Id.)

1 Unsurprisingly, the Grants have disputed any accounting which suggests that,
2 on a MIMO basis, they were paid more than they invested, collectively. (Id. at ¶ 7.)
3 The Receiver likewise disputed the accounting which suggests that the Grants were
4 net losers, again on a MIMO basis. (Id.)

5 Having examined the amounts that would be in controversy were the Receiver
6 to commence litigation against the Grants to recover or disgorge funds that appear,
7 under his MIMO analysis, to represent net profits, and given that a plausible
8 accounting can be developed which shows the Grants to be net losers, the Receiver
9 has instead determined, in his reasonable business judgment, that it is better to
10 resolve this dispute now, in a manner that results in a payment by the Grants to the
11 estate of the Receivership Entities. (Id. at ¶ 8.) Accordingly, the Receiver, the
12 Grants, and Amagansett have entered into the Settlement Agreement, the key terms
13 of which include:

- 14 • The Grants and Amagansett will, collectively, make a payment to the
15 Receiver in the amount of \$150,000, after Court approval of the
16 Settlement Agreement;
- 17 • The Grants and Amagansett shall likewise waive any claims against the
18 Receivership Entities, including the right to submit a claim for
19 reimbursement or for net losses on investments, if any;
- 20 • The Grants and Amagansett shall release the Receivership Entities from
21 any and all claims, known or unknown, with a concomitant release
22 from the Receiver, on behalf of Essex; and
- 23 • In exchange, and in addition to a release by the Receiver, on behalf of
24 Essex, the Receiver shall cause Essex to assign all of Essex's interest in
25 and rights to Amagansett to the Grants.

26 (Id. at ¶ 8, Ex. A.)

27 In the Receiver's reasonable business judgment, commencing litigation and
28 pursuing uncertain claims against the Grants or Amagansett does not reflect an

1 appropriate disposition of limited receivership estate resources. Accordingly, the
2 Receiver believes that the payment contemplated in the Settlement Agreement
3 reflects an appropriate compromise, sufficient to adequately compensate the
4 Receivership Entities. (Id. at ¶ 9.) The Receiver therefore respectfully requests that
5 the Court approve the settlement as memorialized by the Settlement Agreement and
6 authorize him to perform his agreed-upon obligations thereunder.

7 **III. ARGUMENT.**

8 A federal receiver's power to compromise claims is subject to court approval.
9 As noted by the Ninth Circuit Court of Appeals in SEC v. Hardy, 803 F.2d 1034,
10 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity receivership
11 and to determine the appropriate action to be taken in the administration of the
12 receivership is extremely broad." With regard to settlements entered into by a
13 federal receiver, the Court's supervisory role includes reviewing and approving
14 those settlements in light of a federal policy generally favoring settlements before
15 trial. See Fed. R. Civ. P. 16(c), Advisory Committee Notes.

16 Courts often look to bankruptcy for guidance in the administration of
17 receivership estates. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 745
18 (9th Cir. 2005); SEC v. Am. Capital Inv., Inc., 98 F.3d 1133, 1140 (9th Cir. 1996);
19 SEC v. Basic Energy & Affiliated Res., 273 F.3d 657, 665 (6th Cir. 2001); see also
20 Local Civil Rule 66-8 ("a receiver shall administer the estate as nearly as possible in
21 accordance with the practice in the administration of estates in bankruptcy"). A
22 bankruptcy court may approve a compromise of claims asserted by or against the
23 estate if the compromise is "fair and equitable." Woodson v. Fireman's Fund
24 Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). The approval of a
25 proposed compromise negotiated by a court-appointed fiduciary "is an exercise of
26 discretion that should not be overturned except in cases of abuse leading to a result
27 that is neither in the best interest of the estate nor fair and equitable for the
28 creditors." In re MGS Mktg., 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

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

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

9 Here, the Receiver has weighed the costs and benefits of litigation and
10 determined, in his reasonable business judgement, that the settlement, as
11 memorialized by the Settlement Agreement, is in the best interests of the
12 Receivership Entities. As noted above, the Receiver has undertaken a rigorous
13 analysis of the business and financial activities of the Receivership Entities,
14 including with respect to the Grants' investments, the results of which have been
15 uniquely uncertain with respect to the Grants, given the time, duration, and nature of
16 the investments they made and payments they received from Essex. These
17 circumstances, in turn, reduce the probability of success.

18 Moreover, in order to prosecute any disgorgement claims in good faith, the
19 Receiver would require clear and convincing evidence that the Grants were profiting
20 investors, which evidence has not been uncovered. This, too, suggests an
21 uncertainty which militates in favor of settlement.

22 Given the risk and uncertainty present here, the potentially significant cost of
23 litigation, and the immediate-term benefit to the estate of the Receivership Entities
24 from their anticipated receipt of the \$150,000 settlement payment provided for in
25 the Settlement Agreement, the Receiver has concluded, in his reasonable business
26 judgment, that the proposed settlement is in the best interests of the Receivership
27 Entities, including their investors and creditors. He therefore requests that this
28 Court enter an order approving the settlement, as memorialized in the Settlement

1 Agreement, and authorizing the Receiver to perform his agreed-upon obligations
2 thereunder.

3 **IV. CONCLUSION.**

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

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8 Dated: June 11, 2020

ALLEN MATKINS LECK GAMBLE
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DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

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11 By: /s/ David R. Zaro

12 DAVID R. ZARO
13 Attorneys for Receiver
14 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 **June 11, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **NOTICE OF MOTION AND MOTION OF RECEIVER, GEOFF WINKLER, FOR ORDER APPROVING AND AUTHORIZING PERFORMANCE OF SETTLEMENT AGREEMENT; MEMORANDUM OF PINTS AND AUTHORITIES IN SUPPORT.**

- 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 **June 11, 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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