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7 Attorneys for Receiver
 8 GEOFF WINKLER

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

16 RALPH T. IANNELLI and ESSEX
 CAPITAL CORP.,

17 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: October 6, 2022
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

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

24 **PLEASE TAKE NOTICE** that on October 6, 2022 in Courtroom 6D of the
 25 above-entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Geoff
 26 Winkler, the Court-appointed permanent receiver (the "Receiver") for Essex Capital
 27 Corporation, and its subsidiaries and affiliates (collectively, the "Receivership
 28 Entities") will move the Court for an order approving the Receiver's settlement of

1 the litigation styled Winkler v. 915 Elm Avenue CVL, LLC, Case No. 2:21-cv-
2 00869-FMO-AFM (the "CVL Action") and Winkler v. Reyner, et al., Case No.
3 2:22-cv-0800-FMO-AFM (the "Second Action"), and authorizing the parties to the
4 settlement agreement memorializing the resolution of the CVL Action and Second
5 Action to perform their respective obligations thereunder.

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, the documents and pleadings already
9 on file in this action, and upon such further oral and documentary evidence as may
10 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 August 15, 2022.

13
14 Dated: September 7, 2022

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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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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 (again, with Essex, the "Receivership Entities"), seeks Court approval of a
6 negotiated settlement with 915 Elm Avenue CVL, LLC ("CVL"), William S.
7 Reyner, Jr., William S. Reyner III, the William S. Reyner, Jr. Trust, and Reyner
8 Family Partners, L.P. (collectively, but not including CVL, the "Reyner Parties"), in
9 order to resolve, fully and completely, the CVL Action and the Second Action.

10 As detailed herein, the Receiver has weighed the costs and benefits of
11 continued litigation with the CVL and the Reyner Parties and has determined, in his
12 reasonable business judgment, that the proposed settlement is in the best interest of
13 the receivership estate because it will: (1) result in the recovery of \$1.1 million for
14 the benefit of the Receivership Entities and their estate, an amount reflecting 100%
15 of the funds which the Receiver initially alleged were wrongfully diverted from
16 Essex; and (2) definitively resolve what has proved to be complex and costly
17 litigation of prolonged duration. The Receiver therefore respectfully submits that
18 the settlement is appropriate and beneficial for the Receivership Entities, and
19 requests that the Court authorize and approve the settlement, as memorialized by the
20 concurrently submitted Settlement Agreement and Mutual Release, a copy of which
21 is attached to the concurrently filed Declaration of Geoff Winkler (the "Winkler
22 Decl.") as **Exhibit A.**

23 **II. RELEVANT FACTUAL BACKGROUND.**

24 **A. The Receiver's Appointment.**

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

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

6 **B. The CVL Transaction.**

7 In the course of his investigation and analysis of the business and financial
8 activities of the Receivership Entities, the Receiver concluded that hundreds of
9 thousands in Receivership Entity funds had been wrongfully diverted by Essex's
10 principal, Ralph Iannelli, Jr. to a transaction pursuant to which Mr. Iannelli obtained
11 an (initially, majority) interest in CVL, and CVL purchased a lumber yard operation
12 and associated real and personal property (collectively, the "Lumber Yard") located
13 in Carpinteria, California. (Winkler Decl. ¶ 2.) The Receiver further concluded that,
14 not only had Receivership Entity funds been diverted to a transaction which
15 benefitted only Mr. Iannelli, in his personal capacity, but more than \$450,000 in
16 additional Receivership Entity funds had been used to retire a portion of a
17 \$1.5 million debt that Mr. Iannelli caused Essex – which did not receive any interest
18 in or benefit from the CVL transaction – to incur. (Id.) The Receiver also
19 concluded that this \$1.5 million debt was mirrored by a note from CVL and payable
20 to Essex in the face amount of \$1.5 million, what had come due by the time of his
21 appointment but which had not been repaid. (Id.)

22 **C. The Receiver's Claims Against CVL.**

23 On December 5, 2019, the Receiver petitioned the Court for authority
24 commence litigation against CVL. (ECF No. 125.) In support of his petition, the
25 Receiver contended, among other things, that: (1) the business and financial
26 activities of the Receivership Entities were consistent with a Ponzi investment
27 scheme; (2) at least \$643,000 in funds from the Receivership Entities were diverted
28 by Mr. Iannelli to CVL; (3) Mr. Iannelli had caused Essex to incur a \$1.5 million

1 repayment obligation to the seller of the Lumber Yard, which obligation was
 2 mirrored by a contemporaneous note from CVL to Essex (the "CVL Note") in the
 3 face amount of \$1.5 million; and (4) by the time of the Receiver's appointment,
 4 Essex had repaid over \$450,000 in connection with its obligation to the Lumber
 5 Yard's seller, while the CVL Note had come due but not been paid. (Id.)

6 In other words, the Receiver alleged that approximately \$1.1 million in funds
 7 were diverted from the Receivership Entities to fund CVL's purchase of the Lumber
 8 Yard and to (partially) repay Essex's obligation to the Lumber Yard's seller, and that
 9 Essex was still contractually obliged to pay another \$1 million to the Lumber Yard's
 10 seller, with no concomitant benefit to Essex or the Receivership Entities. After the
 11 Receiver was appointed, Mr. Iannelli assigned to the Receiver the 39.04% interest
 12 he held in CVL, which interest the Receiver has confirmed was purchased with
 13 funds diverted from the Receivership Entities.¹ (Winkler Decl. ¶ 3.)

14 The Court granted the Receiver's petition to commence litigation against CVL
 15 on July 29, 2020 (ECF No. 177) and, on January 29, 2021, the Receiver filed his
 16 original Complaint in the CVL Action, alleging causes of action against CVL for:
 17 (1) Avoidance and Recovery of Actually Fraudulent Transfers; (2) Avoidance and
 18 Recovery of Constructively Fraudulent Transfers; (3) Breach of Contract [on the
 19 CVL Note]; (4) Breach of Contract [on a second note from CVL to Essex, in a
 20 significantly smaller amount]; (5) Unjust Enrichment; and (6) Declaratory Relief.
 21 (See CVL Action ECF No. 1.) With the Court's permission, the Receiver
 22 subsequently amended his Complaint in the CVL Action, eliminating his claims for
 23 fraudulent transfer. (See CVL Action ECF Nos. 33, 34.) Thereafter, the parties to
 24

25 ¹ As noted above, and in some of the Receiver's prior submissions to the Court,
 26 Mr. Iannelli's interest in CVL, which was purchased with funds diverted from the
 27 Receivership Entities, was originally in the amount of over 60%. In
 28 August 2018, CVL issued a capital call that Mr. Iannelli did not answer, and his
 membership interest was reduced. While the Receiver alleged a claim in his
 Complaint against CVL to restore that interest, he has agreed to accept the
 percentage held by Mr. Iannelli at the inception of the receivership (39.04%) in
 order to secure a reasonable settlement of the litigation addressed herein.

1 the litigation engaged in significant discovery and an ultimately unsuccessful
2 mediation.

3 The Receiver and CVL filed their respective Motions for Summary Judgment
4 on April 11, 2022, which motions remain pending. (CVL Action ECF Nos. 35-39.)
5 However, settlement discussions between the parties continued. On July 19, 2022,
6 the Receiver and CVL filed a Joint Notice of Settlement advising the Court of the
7 settlement proposed for approval by way of the instant Motion. (ECF No. 49.)

8 **D. The Receiver's Claims Against The Reyner Parties.**

9 On February 4, 2022, acting on information obtained during discovery in the
10 CVL Action, the Receiver commenced the Second Action, alleging various causes
11 of action against the Reyner Parties arising from and in connection with the CVL
12 transaction. Each of the causes of action alleged in the Second Action arose from
13 the same or a substantially similar transactional nucleus of facts as did the claims
14 alleged by the Receiver the CVL Action. (See Second Action ECF No. 1.) As of
15 the date of this Motion, the Reyner Parties have not responded to the Receiver's
16 Complaint, instead filing (with the Receiver) a Joint Notice of Settlement (Second
17 Action ECF No. 18) on July 19, 2022, advising the Court of the settlement presently
18 submitted for approval via the instant Motion.

19 **E. The Settlement Agreement.**

20 The Receiver has undertaken a diligent review of the record developed in the
21 prosecution of the CVL Action, including materials produced subject to the
22 settlement and mediation privileges. (Winkler Decl. ¶ 4.) The information obtained
23 by the Receiver has enabled him to: (1) confirm certain of the alleged diversions of
24 funds from the Receivership Entities by Mr. Iannelli; (2) estimate the value of the
25 Lumber Yard's business operations and real property as over \$6 million; and
26 (3) estimate of the value of the Lumber Yard's real property alone as, at least,
27 \$2 million. (Id.) As noted above, the Receiver holds a 39.04% interest in the CVL,
28 which owns the Lumber Yard, for the benefit of the Receivership Entities. In

1 addition, the Receiver has undertaken an extensive review of the fees and expenses
2 incurred to date in connection with litigation the CVL Action and the Second
3 Action, along with the fees and expenses estimated to be incurred should both of
4 these matters continue to be litigated through trial. (Id.)

5 CVL and the Reyner Parties vigorously dispute the causes of action alleged
6 by the Receiver in the CVL Action and the Second Action, and have aggressively
7 defended against the Receiver's claims. Nonetheless, after extensive litigation and
8 discovery in the CVL Action, multiple substantive discussions regarding the claims
9 alleged in the Second Action, and the Receiver's review of the record developed and
10 fees and expenses incurred to date, the Receiver, CVL, and the Reyner Parties have
11 arrived at a settlement intended to resolve both the CVL Action and the Second
12 Action. (Winkler Decl. ¶ 5, Ex. 1.) The parties have executed a Settlement
13 Agreement and Mutual Release (the "Settlement Agreement"), the key terms of
14 which include:

- 15 • CVL will make payments totaling \$1.1 million to the Receiver,
16 resulting in the recovery of nearly 100% of the funds initially identified
17 by the Receiver as having been wrongfully diverted to the CVL
18 transaction;
- 19 • The Receiver shall retain the interest he presently holds in CVL for the
20 benefit of the Receivership Entities, which interest shall be protected
21 from dilution via any capital calls or other demands for funding from
22 CVL, and which interest may subsequently be sold by the Receiver
23 (resulting in a recovery of additional funds) or deposited into a
24 liquidating trust;
- 25 • CVL will be permitted, upon the election of its manager, to split its
26 business and real estate holdings for the purposes of assigning a 10%
27 interest in CVL's business to its long-time general manager, Jason
28

1 Minteer, while permitting the Receiver to retain an undiluted 39.04%
2 interest in CVL's valuable real property;

- 3 • The Receiver, CVL, and the Reyner Parties will mutually release one
4 another for any and all claims arising from or in connection with the
5 issues underlying the CVL Action and the Second Action (including
6 unknown claims); and
- 7 • Upon the first payment to the Receiver contemplated by the Agreement
8 (in the amount of \$800,000), the CVL Action and the Second Action
9 shall be submitted for dismissal, with prejudice.

10 (Id., Ex. A.)

11 In the Receiver's reasonable business judgment, the settlement presents an
12 opportunity to realize an excellent recovery for the benefit of the Receivership
13 Entities. (Id. at ¶ 6.) This is particularly so given that the settlement memorialized
14 by the Agreement (1) contemplates payments to the Receiver of approximately
15 100% of the funds initially alleged to have been improperly transferred by
16 Mr. Iannelli in connection with the CVL transaction; while (2) permitting the
17 Receiver to retain his interest for prospective sale at a later date, the settlement
18 presents an opportunity to realize an excellent recovery for the benefit of the
19 Receivership Entities. (Id.) This is underscored by the fact that, as reflected in the
20 Receiver's recent Interim Reports, the prosecution of the CVL Action has been more
21 complicated, costly, and extensive than initially anticipated.

22 If approved by the Court, the settlement would result in a significant cash
23 recovery for the benefit of the Receivership Entities and enable the Receiver to
24 significantly reduce the attorneys' fees and expenses he is incurring in connection
25 with his service as Receiver, thereby benefitting the receivership estate even further.
26 It would also enable him to retain a valuable interest in CVL for disposition at later
27 date, preserving the opportunity to secure still greater recoveries. Accordingly, the
28 Receiver believes that the settlement memorialized by the Settlement Agreement

1 reflects an appropriate compromise, and adequately compensates the Receivership
2 Entities for their alleged injury. (Id. at ¶ 7.) The Receiver therefore respectfully
3 requests that the Court approve the settlement as memorialized by the Settlement
4 Agreement and authorize him, CVL, and the Reyner Parties to perform their
5 respective obligations thereunder.

6 **III. ARGUMENT.**

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

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

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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.

13 As noted above, the Receiver has undertaken a diligent review of the record
14 developed in the prosecution of the CVL Action, including materials produced
15 subject to the settlement and mediation privileges. While the Receiver has
16 confirmed certain of the alleged diversions of funds from the Receivership Entities
17 by Mr. Iannelli in connection with the CVL transaction, and has developed an
18 estimate of the value of the Lumber Yard, including its associated real property, he
19 has also evaluated the prospective, significant cost associated with continued
20 litigation.

21 While the Receiver is confident in the claims he has alleged, CVL and the
22 Reyner Parties have defended and are expected to continue to defend against the
23 Receiver's claims vigorously. Moreover, notwithstanding the Receiver's confidence
24 in his accounting and the viability of his claims, the pendency of the parties'
25 competing Motions for Summary Judgment suggests there are complicated issues to
26 resolve, which may require the time and expense associated with trial. Because the
27 claims alleged in the Second Action derive from the same nucleus of facts as do
28 those in the CVL Action, it is reasonable to believe that the Second Action will be

1 vigorously defended as well, increasing litigation cost and further delaying a
2 complete resolution of the Receiver's claims.

3 Perhaps most critically, the settlement proposed here *significantly* benefits
4 creditors of the Receivership Entities. As noted above, the Receiver's initial
5 allegations, based on a detailed accounting of the business and financial activities of
6 the Receivership Entities, included claims that Mr. Iannelli improperly diverted
7 approximately \$1.1 million in Receivership Entity funds to CVL (in connection with
8 his purchase of an interest in CVL and CVL's purchase of the Lumber Yard). This
9 settlement, if performed, would return 100% of that amount to the receivership
10 estate, while enabling the Receiver to retain his interest in the Lumber Yard for later
11 disposition, including via sale. Put another way, *the settlement will result in a cash*
12 *payment recovery of approximately 100% of the amount initially identified as*
13 *having been wrongfully diverted from Essex, and could yield still greater returns* for
14 the benefit of the receivership estate if and when the Receiver sells his interest.
15 Accordingly, the Receiver respectfully submits that the settlement, as memorialized
16 in the Agreement, is in the best interests of the Receivership Entities' creditors.

17 **IV. CONCLUSION.**

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

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22 Dated: September 7, 2022

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