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7 Attorneys for Defendants
Ralph T. Iannelli and
Essex Capital Corporation
8

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

12
13 Securities and Exchange Commission,

14 Plaintiff,

15 v.

16 Ralph T. Iannelli and Essex Capital
Corporation,

17 Defendants.
18
19

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

**DECLARATION OF JORGE
DENEVE IN SUPPORT OF
DEFENDANTS' OBJECTION
AND RESPONSE TO
MONITOR'S REPORT**

Judge: Hon. Fernando M. Olguin
Courtroom: 6D

Trial Date: None Set

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1 I, J. Jorge deNeve, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. I am an attorney at law, licensed to practice in the State of California.
3 I am counsel at O’Melveny & Myers LLP, counsel of record for Defendants Ralph
4 T. Iannelli and Essex Capital Corporation (“Essex”) (collectively, “Defendants”).
5 I submit this declaration in support of Defendants’ Objection and Response to
6 Monitor’s Report and Recommendations. I have personal knowledge of the facts
7 stated in this declaration, and if called as a witness, I could and would competently
8 testify hereto.

9
10 **The Monitorship**

11 2. On November 15, 2018, I contacted Geoff Winkler, the court-
12 appointed Monitor in this case, to request a list of outstanding requests. He
13 provided me a list of two items that same day. Specifically, he stated that he had
14 requested (1) “[a] list of all investment activity since the formation of Essex (loans,
15 leases, investments, etc.)” and (2) “[a] copy of all checks and deposits for the
16 primary Essex and Iannelli checking accounts from Montecito Bank & Trust.” A
17 copy of the Monitor’s email listing those items is attached hereto as **Exhibit A**.

18 3. After receiving Exhibit A, I spoke with the Monitor on November 15,
19 2018. He stated that, given that Essex began maintaining QuickBooks records in
20 2007, he was satisfied getting the data from 2007 forward.

21 4. I did not hear from the Monitor regarding document requests again
22 until November 30, 2018. At that point, he reached out to the parties by email and
23 stated that he had not received everything he requested in explaining that he was
24 not filing his report on November 30, 2018. I immediately contacted him and again
25 requested the list of pending items. He responded and provided additional items
26 that he claims were outstanding and stated, “Given that the report will be filed early
27 next week, there is no need to make anyone work over the weekend to gather it, but
28 this is information that we will either need or need to know where we can find it.”

1 On December 3, 2018, I responded, noting that, as of November 15, he had
2 identified only two outstanding requests and had agreed to accept only data from
3 2007 forward. A copy of this email exchange is attached hereto as **Exhibit B**. The
4 Monitor did not respond to my December 3, 2018 email to him.

5 5. On November 28, 2018, I had a call with the Monitor about his
6 proposed recommendation that the Court appoint him as a receiver. As part of the
7 discussion, we discussed his upcoming report. He acknowledged that it was not
8 part of his mandate to address the issue of intent or scienter. He also volunteered
9 that he believed that Essex was started as a legitimate business but that it has
10 suffered from the bankruptcies of certain of its lessees and bad investments. He
11 also stated that he did not believe that Mr. Iannelli set out to commit fraud and that
12 he wanted Mr. Iannelli to serve as an advisor to him because of Mr. Iannelli's
13 experience and knowledge of the industry and of Essex's history.

14 6. I continued negotiating with the Monitor regarding the proposed order
15 from November 28, 2018 through December 5, 2018. During that period, the
16 Monitor and I exchange numerous drafts of the proposed order. However, the
17 Monitor did not share any draft of the Report. The first time I saw his Report was
18 after it was electronically served and filed by the SEC.

19 7. On June 5, 2018, the SEC filed a recommendation for the appointment
20 of Mr. Winkler as a receiver that included Mr. Winkler's proposal. (Dkt. No. 4-3.)
21 Mr. Winkler's proposal highlights that Steve Daughters would be part of his team
22 and notes that Mr. Daughters has expertise in equipment leasing and is a forensic
23 accountant. (*Id.* at 6, 13-16.) I have never communicated with Mr. Daughters. He
24 has not been part of any calls I have had with Mr. Winkler and was not part of a
25 meeting in Santa Barbara with Mr. Winkler, Mr. Iannelli, and me. In contrast, John
26 B. Hall has been on a number of communications with the Monitor and in the
27 meeting that took place in Santa Barbara. Mr. Winkler introduced Mr. Hall as the
28 person that was assisting him with the monitorship. Mr. Winkler, however, has not

1 once mentioned that Mr. Daughters was part of his monitorship team. It is clear
2 that Mr. Daughters is not part of the Monitor's team.

3 8. On November 30, 2018, I reached out to Doug Miller, the SEC's
4 counsel, to discuss the current action. During the conversation, Mr. Miller
5 informed me that he had a copy of a draft of the Monitor's Report.

6 9. On December 14, 2018, I downloaded a marketing piece describing
7 Mr. Winkler's experience from <https://www.alvarezandmarsal.com/printpdf/31691>,
8 which is a page on the website maintained by Mr. Winkler's firm, Alvarez and
9 Marsal. A true and correct copy of that document is attached hereto as **Exhibit C**.

11 **The SEC's Financial Analysis**

12 10. In support of its earlier motion for a preliminary injunction, the SEC
13 submitted the declaration of Staff Accountant Rhoda Chang. (Dkt. No. 6 ("Chang
14 Decl.")). Ms. Chang declared, "In conjunction with my duties as an accountant at
15 the SEC and based on my training and experience as a CPA for nearly 30 years, I
16 analyzed the bank records for Essex's accounts at Montecito Essex Account and
17 First Republic Bank Essex Account to determine the sources and uses of funds held
18 in those accounts from January 1, 2014 through March 30, 2018. I supplemented
19 that analysis with a review of certain Essex QuickBooks records that provided
20 additional detail for certain transactions reflected in Essex's bank account records."
21 (Chang Decl. ¶ 6.)

22 11. On or about June 27, 2018, the SEC's counsel made Ms. Chang's
23 detailed support (maintained in a Microsoft Excel format) for her analysis available
24 to me. Ms. Chang's analysis, under which she concluded that there were certain
25 specific payments that she characterized as "Ponzi-like" made several assumptions
26 to calculate funds that came into Essex from "Investors" (*i.e.*, noteholders) as
27 opposed to "Non-Investors" from January 2014 to March 2018. Ms. Chang
28 describes her assumptions in paragraph 9 of her declaration.

1 12. Using Ms. Chang’s detailed support, I compared the funds from the
2 “Non-Investors” category to the funds from the “Investor” category for the period
3 from January 1, 2014 through December 31, 2017, not just for specific days when
4 Essex made payments to noteholders. I followed the same assumptions that
5 Ms. Chang used with a few exceptions that simplified the analysis and favored the
6 SEC position. I adjusted the assumptions as follows:

- 7 • I treated funds received from Carnegie GM Partners, which loaned
8 Essex over \$23 million as “Investor Funds.” It appeared to me that
9 there were some instances where Ms. Chang had categorized funds
10 from Carnegie GM Partners as “Non-Investor Funds.”
- 11 • I treated funds paid to Carnegie GM Partners as “Non-Investor Funds.”
12 It appeared to me that there were some instances where Ms. Chang had
13 categorized funds paid to Carnegie GM Partners as “Investor Funds,”
14 which meant that “Investor Funds” could be used to pay Carnegie GM
15 Partners and, therefore, reduce the amount that, under the SEC’s
16 theory, had to be paid from “Non-Investor Funds.”
- 17 • I treated funds received from Mr. Iannelli as “Investor Funds.”
18 Ms. Chang was treating Mr. Iannelli’s credit transactions as “Non-
19 Investor Funds,” which meant that she viewed using those funds to pay
20 back noteholders as appropriate.
- 21 • I treated all loan proceeds as “Investor Funds.” Ms. Chang treated
22 certain loan proceeds as “Non-Investor Funds,” which meant that those
23 loan proceeds could be used to pay back noteholders. Treating all loan
24 proceeds as “Investor Funds” helped to simplify the analysis and
25 meant that, under the SEC’s theory, Essex could not use those funds to
26 pay back noteholders.
- 27 • I categorized all equipment purchases as “Investor Funds.” This
28 change relates to Ms. Chang’s categorization of certain loan proceeds

1 as “Non-Investor Funds.” Specifically, Ms. Chang stated, “As for the
 2 last exception, on 11 occasions, I identified incoming loan proceeds
 3 from Montecito Bank that were near in time and corresponded to a
 4 specific outgoing equipment purchase expense. In those cases, I
 5 credited the incoming loan proceeds to Non-Investor Funds. And
 6 since those proceeds were intended to finance the purchase of a
 7 specific piece of equipment, I debited the corresponding equipment
 8 purchase expense from Non-Investor Funds, rather than Investor
 9 Funds.” (Chang Decl. ¶ 6:25 – 7:3.) To simplify the analysis and
 10 because I treated all loan proceeds as “Investor Funds,” I transferred
 11 the equipment purchases that Ms. Chang determined were related
 12 directly to a bank loan, back to “Investor Funds.”

13 13. A summary of my analysis by the categories identified by the SEC
 14 follows:

Category	Investor Funds	Non-Investor Funds
1 Opening Balance	\$ -	\$ 2,459,035.18
Carnegie GM Partners	\$ 23,361,042.53	\$ (12,591,597.41)
Carnegie GM Partners - Int	\$ -	\$ (1,723,364.97)
Cornerstone Essex LLC	\$ (8,432,053.72)	\$ 9,345,749.40
Equip Purchase	\$ (46,238,847.30)	\$ -
ESSEX WOODLANDS FUND IX LP	\$ (1,371,757.46)	\$ 149,366.72
Fee Exp	\$ (131,707.86)	\$ -
Fee Income	\$ -	\$ 677,124.21
Int Payment - Investment	\$ (31,451.82)	\$ -
Int Pmt to Investor	\$ -	\$ (11,679,874.30)
Interest Expense	\$ (44,258.61)	\$ -
Interest Income	\$ (105,001.48)	\$ 621,996.20
Investment	\$ (6,679,806.88)	\$ 3,917,238.66
Investment-Brokerage	\$ (3,461,718.39)	\$ 1,650,000.00
Lease Payment	\$ (3,577,578.18)	\$ 54,923,934.92
Leasing Expense	\$ (1,780,551.74)	\$ -
Leasing Income	\$ (31,567.53)	\$ 32,508.27
Legal Settlement	\$ (256,000.00)	\$ -
Loan Payment	\$ (37,345,723.56)	\$ 12,734.44
Loan Payment Int	\$ (884,244.44)	\$ -
Loan Payoff	\$ (1,800,000.00)	\$ -
Loan Proceeds	\$ 27,836,079.41	\$ -
Loan Proceeds- Choice	\$ 1,800,000.00	\$ -

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Category	Investor Funds	Non-Investor Funds
Office Exp	\$ (6,767,708.47)	\$ 77,262.30
Other Expenses	\$ (83,254.10)	\$ -
Other Income	\$ -	\$ 347,257.21
Other Loan Rec	\$ (1,702,034.44)	\$ 9,333,662.97
Partnership Income	\$ -	\$ 200,731.21
Payment to Investor	\$ -	\$ (63,432,655.00)
Payment to Ltd Partnership	\$ -	\$ (2,019,838.14)
Proceeds from Investor	\$ 63,109,967.42	\$ -
Proceeds from Ltd Partnersh	\$ 10,401,642.00	\$ -
Ralph Iannelli	\$ (7,107,895.70)	\$ -
Residual Income	\$ -	\$ 1,001,319.59
Residual Payment	\$ -	\$ (924,718.72)
Security Deposit	\$ -	\$ 200,000.00
Transfer Btn MBT/FRB	\$ -	\$ -
Transfer from 191047311	\$ -	\$ 6,843.90
Transfer from Jefferies	\$ -	\$ 7,830,000.00
Transfer from ML	\$ -	\$ 1,900,000.00
Transfer from Santa Barbara	\$ -	\$ 84,704.61
Transfer to UBS Brokerage Account	\$ -	\$ 76,299.21
White Bay Essex	\$ (1,101,626.40)	\$ -
Grand Total	\$ (2,426,056.72)	\$ 2,475,720.46

The analysis reveals that, after payment of all noteholders from items categorized as “Non-Investor Funds,” Essex still had over \$2 million in “Non-Investor Funds.” Conversely, the expenses that the SEC assumed could be paid with “Investor Funds” exceeded “Investor Funds” by \$2 million. Accordingly, the SEC’s own theory of what constitutes a Ponzi scheme shows that the claim that Essex operated as a Ponzi scheme is false and misleading.

14. I provided the details behind my analysis described in Paragraph 13 to the Monitor on November 28, 2018. The Monitor did not respond and does not mention or otherwise address that analysis in his Report.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this December 14, 2018, in Los Angeles, California.

/s/ Jorge deNeve
Jorge deNeve

Exhibit A

From: Winkler, Geoff <gwinkler@alvarezandmarsal.com>
Sent: Thursday, November 15, 2018 12:59 PM
To: deNeve, Jorge
Subject: RE: Essex

Jorge-

I am available any time except 2:15pm-2:45pm. The current outstanding items we have requested from Ralph are:

- A list of all investment activity since the formation of Essex (loans, leases, investments, etc.)
- A copy of all checks and deposits for the primary Essex and Iannelli checking accounts from Montecito Bank & Trust.

I requested the list of investment activity on October 30th and I requested the checks this Tuesday. Please let me know when you would like to talk.

Sincerely,

Geoff Winkler, JD, MBA, CFE
Managing Director
Alvarez & Marsal Disputes and Investigations, LLC
425 Market Street, 18th Floor, San Francisco, CA 94105
Office: (415) 490-2278 Mobile: (628) 219-3875 Alt. Mobile: (503) 708-0028

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<http://www.alvarezandmarsal.com>

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-----Original Message-----

From: deNeve, Jorge <jdeneve@omm.com>
Sent: Thursday, November 15, 2018 12:54 PM
To: Winkler, Geoff <gwinkler@alvarezandmarsal.com>
Subject: Essex

Can we talk this afternoon?
Also, do you have a list of pending requests?

Sent from my iPhone

Exhibit B

From: deNeve, Jorge
Sent: Monday, December 3, 2018 4:16 PM
To: 'Winkler, Geoff'
Cc: Hall, John
Subject: RE: SEC v. Essex Capital Corporation

Geoff,

On the requests for information, I received a list on 11/15, in which you had the following outstanding items:

- A list of all investment activity since the formation of Essex (loans, leases, investments, etc.)
- A copy of all checks and deposits for the primary Essex and Iannelli checking accounts from Montecito Bank & Trust.

We had a call and you stated that, given that Essex began maintaining QuickBooks records in 2007, you were fine with getting the data from 2007 forward. I also understand that John similarly requested leases written after January 1, 2007, which is consistent with that time frame. Ralph and Piper have been working diligently to get the information you requested and we believe we have substantially complied with your requests. Nonetheless, if the information was outstanding as of 11/15, the clock on the report had not started running before that date.

As to the specific items you identified below:

- 1,2. Piper is working on getting information for the spreadsheets that you sent (I am not sure if you had previously sent them to Essex, as I do not recall seeing them).
3. As to the third spreadsheet, I am not sure if this is a list of missing leases or loans but I recall seeing some of those names in the material we produced to the SEC (and, therefore, what we sent to you). Please let me know what information you need regarding these items and I believe I can get it for you.
4. As discussed, this was before Essex got onto QuickBooks. If you need that information going forward, I will discuss with Ralph if there is some way to recreate or find it. Given that it is information that is over a decade old, however, its value is probably marginal.
5. I believe you were fine with limiting this to 2007 forward. Investments that Essex might have had that Essex no longer had as of 2007 would seem to be of marginal value. But if you want that information going forward, I will discuss with Ralph how to attempt to identify relevant documents. I will also look into the spreadsheet that you mentioned.

Thanks.

-Jorge

O'Melveny

J. Jorge deNeve

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O'Melveny & Myers LLP
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From: Winkler, Geoff <gwinkler@alvarezandmarsal.com>
Sent: Friday, November 30, 2018 5:05 PM
To: deNeve, Jorge <jdeneve@omm.com>
Cc: Hall, John <jhall@alvarezandmarsal.com>
Subject: RE: SEC v. Essex Capital Corporation

Jorge-

I am not copying everyone due to the sensitive nature of the information in these requests. The first two groups of items we are missing relate to the blank payor/payee information for transactions in the Quickbooks accounting (see first two attachments). The third group we need relates to promissory notes (see third attachment). The information we received was for only the most recent promissory note and did not include any promissory notes prior to 2007 and very limited information for 2007-2010. The fourth group of information we are accounting records prior to 1/1/2007. Finally, the last information we requested is complete information related to all investments that Essex ever participated in. I provided Ralph a spreadsheet with the information I needed, but he sent it back incomplete. He promised me he would complete it on the Monday prior to Thanksgiving, but that is the last I heard on the subject. Given that the report will be filed early next week, there is no need to make anyone work over the weekend to gather it, but this is information that we will either need or need to know where we can find it. Please let me know if you have any questions.

Sincerely,

Geoff Winkler, JD, MBA, CFE

Managing Director

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From: deNeve, Jorge <jdeneve@omm.com>
Sent: Friday, November 30, 2018 3:31 PM
To: Winkler, Geoff <gwinkler@alvarezandmarsal.com>; michael.mena@akerman.com; mark.riera@akerman.com; brian.miller@akerman.com; Miller, Douglas <millerdou@SEC.GOV>; Leung, Gary <LeungG@SEC.GOV>; Ochoa, Yolanda <ochoay@SEC.GOV>
Cc: Hall, John <jhall@alvarezandmarsal.com>
Subject: RE: SEC v. Essex Capital Corporation

Geoff,

Can you send me a list of the pending requests?

-Jorge

O'Melveny

J. Jorge deNeve

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From: Winkler, Geoff <gwinkler@alvarezandmarsal.com>

Sent: Friday, November 30, 2018 2:54 PM

To: deNeve, Jorge <jdeneve@omm.com>; michael.mena@akerman.com; mark.riera@akerman.com; brian.miller@akerman.com; Miller, Douglas <millerdou@SEC.GOV>; Leung, Gary <LeungG@SEC.GOV>; Ochoa, Yolanda <ochoay@SEC.GOV>

Cc: Hall, John <jhall@alvarezandmarsal.com>

Subject: SEC v. Essex Capital Corporation

Greetings:

As you know, under the order of my appointment, I am required to file a report of my findings within 45 days of receipt of all the documents necessary to complete my duties. While I still have not received everything I requested, I knew the urgency surrounding the filing of this report and so I chose November 30, 2018 as the date I intended to file my report. Despite my best efforts, I wanted to notify you that I will not be filing my report today and instead intend to file it early next week. Please feel free to contact me if you have any questions.

Sincerely,

Geoff Winkler, JD, MBA, CFE

Managing Director

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Exhibit C



GEOFF WINKLER

MANAGING DIRECTOR

San Francisco

gwinkler@alvarezandmarsal.com
+1 628 219 3875

quick facts

- 20+ years of experience
- Specializes in fiduciary services, performing fraud, forensic and regulatory investigations



Geoff Winkler is a Managing Director with Alvarez & Marsal Disputes and Investigations in San Francisco. With more than 20 years of experience, Mr. Winkler specializes in fiduciary services, performing fraud, forensic and regulatory investigations for regulatory agencies and financial institution clients. Additionally, he has significant experience conducting Anti-Money Laundering (AML) and White Collar Crime investigations and has served as an expert witness in dozens of fraud, forensics and damages calculation cases in mediation, arbitration and state and federal courts.

Mr. Winkler has conducted investigations on behalf of the Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC) and has worked with clients across various industries, including banking, finance, agriculture, construction, consumer products, healthcare, insurance, manufacturing, private equity, professional services, real estate, securities, retail and telecommunications.

Prior to joining A&M, Mr. Winkler served as the Director of Fraud and Forensic Investigations at the Bates Group LLC and as the Director of Case Management at the Grassmuck Group.

Mr. Winkler earned a bachelor's degree in politics, an MBA, and a JD degree from Willamette University. He is a Certified Fraud Examiner (CFE), a Certified Insolvency and Restructuring Advisor (CIRA) and is a member of the Association of Certified Fraud Examiners (ACFE), the National Association of Federal Equity Receivers (NAFER), the Association of Insolvency and Restructuring Advisors (AIRA) and the Association of Certified Anti-Money Laundering Specialists (ACAMS).