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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

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

**SECOND DECLARATION OF
GREG VAN WYK RELATED TO
MONITOR'S REPORT AND
RECOMMENDATIONS**

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

Trial Date: None Set

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1 I, Greg Van Wyk, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. I submit this declaration in response to the Report of Preliminary
3 Accounting of Defendant Essex Capital Corporation and Recommendations of
4 Court-Appointed Monitor Geoff Winkler. I have personal knowledge of the facts
5 stated in this declaration, and if called as a witness, I could and would competently
6 testify hereto.

7 2. I am currently a registered investment adviser with Daniel Investment
8 Associates (“DIA”), and am generally familiar with my clients’ activities lending
9 money to Essex Capital. Nineteen of DIA’s clients (or former clients) have lent
10 over \$10 million to Essex Capital and are current creditors of Essex Capital.

11 3. On or about November 28, 2018, the Court-Appointed Monitor Geoff
12 Winkler called me to ask for my support, on behalf of DIA’s clients, to his
13 appointment as a receiver. Mr. Winkler asked me to provide a statement that I was
14 comfortable with. Based on previous discussions I had with DIA clients and the
15 information provided below in paragraph 4, I recommended supporting his
16 appointment as a receiver over Essex Capital.

17 4. Mr. Winkler informed me that Jorge deNeve, counsel for Defendants
18 Essex Capital and Ralph T. Iannelli, had stated that Defendants believed that the
19 appointment of a receiver would help Essex’s noteholders. This information
20 weighed heavily on our decision to support his appointment as a receiver. I have
21 since learned, however, that (1) Mr. Winkler did not permit Defendants or their
22 counsel to review the Monitor’s Report and (2) Defendants had reserved their rights
23 to respond to the report to address any inaccuracies, erroneous statements, or other
24 matters in the report. Mr. Winkler did disclose that Defendants’ consent to the
25 appointment of a receiver was qualified but did not specify the qualifications. Such
26 information would have been important to my and DIA’s clients’ consideration of
27 whether to support the appointment of Mr. Winkler as a receiver.

28 5. Mr. Winkler also only shared with me a draft of a proposed order for

1 the appointment of a receiver. I have reviewed the “[Proposed] Order Regarding
2 Preliminary Injunction and Appointment of a Permanent Receiver” (Docket No. 60-
3 3) filed in this action. The filed proposed order is similar to the proposed order
4 shared with me. However, Mr. Winkler never shared with me a copy of his Report
5 and did not discuss several relevant observations and certain proposed
6 recommendations. I have now reviewed the Monitor’s Report (Docket No. 60-1)
7 and believe that the Monitor’s statements regarding some of his observations and
8 certain proposed recommendations would have been critical to my and DIA’s
9 clients’ consideration of whether to support the appointment of Mr. Winkler as a
10 receiver.

11 6. Most critically, I am deeply troubled by Mr. Winkler’s inclusion of
12 one of my clients, Mr. Wolansky. First, he has mischaracterized some of the events
13 involving Mr. Wolansky and has potentially damaged Mr. Wolansky’s reputation.
14 Mr. Winkler also mischaracterizes Mr. Wolansky as an Essex Capital “insider.”
15 Nothing could be further from the truth. Mr. Wolansky has never: (1) worked at
16 Essex Capital or for Mr. Iannelli, (2) served as a director of Essex Capital, or (3)
17 even been a shareholder of Essex Capital.

18 7. Just as importantly, the use of Mr. Wolansky’s name in the report is
19 troubling, especially after Mr. Winkler acknowledged, at page 3 of his report, that
20 he made a decision to redact or withhold certain names “to minimize any
21 unintended harm.” Mr. Winkler’s decision to name Mr. Wolansky and to disregard
22 harm to him was unnecessary, imprudent, and a violation of Mr. Wolansky’s
23 privacy. The privacy of DIA’s clients already has been harmed in this case when
24 the SEC filed a list including their names as lenders to Essex Capital.

25 8. Additionally, I am greatly concerned with the general strategy alluded
26 to in the Monitor’s Report with regard to the “unwind” of payments identified as
27 preferential. Such a strategy implemented incorrectly could result in a situation
28 where some creditors may be advantaged over other creditors. Furthermore, to the

1 extent that Mr. Winkler proposes unwinding payments to any of my clients, such as
2 Mr. Wolansky, I would be conflicted and unable to endorse or oppose. My
3 unqualified endorsement of Mr. Winkler and his firm as receiver, without
4 understanding or knowing the specific details of this critical issue, was premature.
5 Furthermore, any information I provided to DIA clients to assist them in making
6 their decision to endorse or oppose Mr. Winkler and his firm as receiver, was
7 incomplete and lacking.

8 9. For all the above reasons and because of the required duties to my
9 clients I must suspend my letter of support for Mr. Winkler and his firm.

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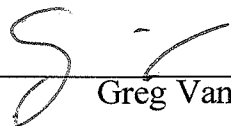
11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed this December 14, 2018, in Santa Barbara, California.

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Greg Van Wyk

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