

1 GARY Y. LEUNG (Cal. Bar No. 302928)
Email: leungg@sec.gov
2 DOUGLAS M. MILLER (Cal. Bar No. 240398)
Email: millerdou@sec.gov
3 YOLANDA OCHOA (Cal. Bar No. 267993)
Email: ochoay@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Michele Wein Layne, Regional Director
6 Alka N. Patel, Associate Regional Director
Amy J. Longo, Regional Trial Counsel
7 444 S. Flower Street, Suite 900
Los Angeles, California 90071
8 Telephone: (323) 965-3998
Facsimile: (213) 443-1904

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **Western Division**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 RALPH T. IANNELLI and ESSEX
18 CAPITAL CORPORATION,

19 Defendants.

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

**SEC'S RESPONSE TO
DEFENDANTS' OBJECTION AND
RESPONSE TO THE MONITOR'S
REPORT (DKT. NO. 63)**

1 On December 14, 2018, defendants Essex Capital Corporation (“Essex”) and
2 Ralph T. Iannelli filed their objection and response to the court-appointed monitor’s
3 report and recommendations. *See* Dkt. No. 63. Plaintiff Securities and Exchange
4 Commission (“SEC”) has reviewed defendants’ filing. In it, defendants do not object
5 to conversion to a receivership, and nowhere in their papers do defendants evince any
6 desire to have defendant Iannelli continue his management of the proposed
7 receivership entity, defendant Essex. Notwithstanding its ad hominem attacks on the
8 monitor (over his use of words like “Ponzi” and “insider” in the report, which
9 defendants claim are “pejorative, and scandalous terms” that “tarnish [their]
10 reputation”), there is nothing in defendants’ response that objects to the basic relief
11 recommended – appointment of a receiver over Essex – relief that defendants had
12 previously agreed to. The reason for defendants’ unwillingness to oppose the
13 appointment of an equitable receiver is easily inferred. In his December 6 report, the
14 monitor found that Essex lacks working capital to continue operations, the company
15 appears insolvent, its assets constitute only a small fraction of the liabilities it owes,
16 and Essex is unable to generate sufficient cash flow to continue as a going concern.
17 Dkt. No. 60-1 at pp. 13-15. None of these findings are confronted by defendants.

18 Instead, by requesting that the Court “strike the Report and require that [the
19 monitor] file a revised, corrected report” that is to their liking, defendants are asking
20 the Court to back them in their effort to spin the record and save face – just because
21 they disagree with certain aspects of the monitor’s report of what he saw, what he
22 learned, and what he discovered about Essex’s financial condition and operations.
23 *See* Dkt. No. 63 at pp. 6, 13 and 19. Defendants’ requested relief, which would only
24 invite further back-and-forth between defendants and the Court’s monitor, is wholly
25 unnecessary. It will only increase the expenses and cost of the monitorship and
26 inordinately delay the appointment of a receiver, even though defendants, the
27 monitor, and the SEC have all agreed, and evidently still agree, that an equitable
28 receivership is warranted.

1 Defendants have had an opportunity to respond to the monitor’s findings in a
2 court filing of their own. In that filing, they have forcefully given their version of the
3 relevant events.¹ There is consequently no good reason to delay the appointment of
4 Geoff Winkler as this Court’s equitable receiver – relief that defendants have already
5 stipulated to and do not deign to substantively oppose in their most recent filing – to
6 protect the interests of all Essex investors. The SEC supports the monitor’s
7 December 6 recommendation.

8 Dated: December 18, 2018

9
10 /s/ Gary Y. Leung
11 GARY Y. LEUNG
12 DOUGLAS M. MILLER
13 YOLANDA OCHOA
14 Attorneys for Plaintiff
15 Securities and Exchange Commission
16
17
18
19
20
21
22
23

24 ¹ Among other things, defendants’ assertion that “the SEC’s own financial analysis
25 shows that Essex had enough non-noteholder revenue to *fully cover* payments made
26 to noteholders from 2014 to 2017” is misleading. Dkt. No. 63 at 8. That premise is
27 based on an aggregation of all incoming cash and outgoing payments over a four-year
28 period – it says nothing about Essex’s repeated inability, on a day-to-day basis, to
make investor payments using non-investor funds. *See* Dkt. No. 23 at 9-10
(explaining in detail defendants’ immediate use of \$4 million Granger investment to
make \$1 million in Ponzi payments in October 2015).

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On December 18, 2018, I caused to be served the document entitled **SEC’S RESPONSE TO DEFENDANT’S OBJECTION AND RESPONSE TO THE MONITOR’S REPORT (DKT. NO. 63)** on all the parties to this action addressed as stated on the attached service list:

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 this agency’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.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

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 under penalty of perjury that the foregoing is true and correct.

Date: December 18, 2018

/s/ Gary Y. Leung
GARY Y. LEUNG

