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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 AUTHORITY TO PURSUE
 LITIGATION AGAINST 915 ELM
 AVENUE CVL, LLC; MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT THEREOF

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

Date: January 9, 2020
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT on January 9, 2020 at 10:00 a.m., in
 Courtroom 6D of the above-entitled Court, located at 350 West First Street, Los
 Angeles, California 90012, Geoff Winkler (the "Receiver"), the Court-appointed
 permanent receiver for Defendant Essex Capital Corporation ("Essex") and its
 subsidiaries and affiliates (collectively, with Essex, the "Receivership Entities"),

1 will and hereby does move for an order authorizing the Receiver to commence
2 litigation against 915 Elm Avenue CVL, LLC ("CVL") in order to: (1) void and
3 recover the transfer of at least \$643,000 in cash diverted from Essex to CVL;
4 (2) enforce defaulted notes issued by CVL in favor of Essex; and (3) obtain a
5 declaration from this Court that CVL and its assets are held in constructive trust for
6 the benefit of the Receivership Entities and their estate, which estate is subject to the
7 exclusive authority and control of the Receiver.

8 This Motion is based on this Court's September 9, 2019 Order Regarding
9 Permanent Injunction, which authorizes the Receiver commence litigation, including
10 to preserve or recover receivership assets, as well as the attached Memorandum of
11 Points and Authorities, the concurrently filed Declaration of Geoff Winkler, and the
12 documents and pleadings already on file in this action, and upon such further oral
13 and documentary evidence as may be presented at time of hearing on the Motion.

14 **This Motion is made following the conference of counsel for the**
15 **remaining parties pursuant to L.R. 7-3, which took place on and around**
16 **November 12, 2019.**

17
18 Dated: December 5, 2019

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23 Attorneys for Receiver
24 GEOFF WINKLER
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 The Receiver was appointed on December 21, 2018 pursuant to this Court's
4 Order Regarding Preliminary Injunction and Appointment of a Permanent Receiver
5 (the "Appointment Order") [ECF No. 66] and vested with, among other things,
6 exclusive authority and control over "Defendant Essex and its subsidiaries and
7 affiliates" and empowered to commence litigation arising from the actions of the
8 Receivership Entities or their employees or agents, and to recover assets of the
9 Receivership Entities. The Court's September 9, 2019 Order Regarding Permanent
10 Injunction (the "Permanent Injunction") [ECF No. 113] reaffirmed this authority.

11 As reflected below, on the basis of his investigation and forensic accounting,
12 the Receiver has confirmed that at least \$643,000 in Essex funds were diverted to
13 915 Elm Avenue CVL, LLC ("CVL") in connection with CVL's purchase and
14 administration of a business operation and associated real property (collectively, the
15 "Lumber Yard") from J&G Clay Properties, LLC and its principal, James Gally
16 (collectively, "Mr. Gally"). The Receiver has further confirmed that CVL's
17 purchase of the Lumber Yard was financed, in significant part, via a seller carryback
18 note (the "Gally Note") issued by Essex to Mr. Gally, in the amount of \$1.5 million,
19 and for which CVL executed a companion note (the "CVL Note") in the amount of
20 \$1.5 million, intended to repay Essex for its extension of credit and obligation to
21 repay the Gally Note. CVL later issued Essex a second note (the "Second CVL
22 Note") in the amount of \$125,000, along with another note in the amount of
23 \$125,000 payable to Defendant Ralph Iannelli, and which appears to have been
24 funded with money from the Receivership Entities.

25 CVL has denied the Receiver's right to recover the \$643,000 in Essex funds
26 that it received, and sought to challenge the turnover of any associated CVL
27 interests purchased with those funds. In addition, while Essex – not CVL – has
28 repaid Mr. Gally nearly \$454,000 in connection with the Gally Note, CVL has

1 disclaimed its repayment obligations arising in connection with the CVL Note and
2 the Second CVL Note, both of which are now in default.

3 In other words, CVL's purchase of the Lumber Yard was effectuated by more
4 than \$2 million in Essex cash and financing obligations. CVL has nonetheless
5 denied the Receiver's right to recover in connection with these transfers and
6 obligations, and appears intent upon unilaterally retaining the benefit therefrom, to
7 the direct and substantial detriment of the Receivership Entities, in violation of the
8 turnover provisions of the Appointment Order and the Permanent Injunction.

9 The Receiver therefore respectfully requests that he now be authorized to
10 commence litigation against CVL to recover in connection with these transfers and
11 obligations. Based on the Receiver's investigation and forensic accounting, and in
12 his reasonable business judgment, he believes these transfers and obligations to be
13 assets of the Receivership Entities and, accordingly, that in the face of CVL's
14 defiance, the commencement of an action against CVL is warranted.

15 **II. STATEMENT OF RELEVANT FACTS.**

16 In 2015, Defendant Ralph Iannelli and CVL's other principal, William S.
17 Reyner, Jr. established CVL in order to purchase the Lumber Yard from Mr. Gally.
18 (See, e.g., ECF No. 115-1 at 8:18-20; 115-3 at ¶ 10.) According to Mr. Reyner,
19 Mr. Iannelli currently owns a 39.04% interest in CVL. (See ECF No. 115-3 at ¶ 4.)

20 As noted above, CVL's purchase of the Lumber Yard was funded in large part
21 by the Gally Note, issued by Essex to Mr. Gally, in the amount of \$1.5 million. (See
22 concurrently submitted Declaration of Geoff Winkler ["Winkler Decl."] ¶ 3, Ex. 1.)
23 Roughly concurrently with the Gally Note, CVL executed the CVL Note and the
24 Second CVL Note, in addition to a third note – payable to Mr. Iannelli, but for
25 which there is strong evidence Essex provided the funding. (Id. at ¶ 4, Exs. 2, 3, 4.)
26 While Essex repaid \$453,683.56 to Mr. Gally in the pre-receivership period in
27 connection with its obligation on the Gally Note, the Gally Note is now in default.
28 (Id. at ¶ 5.) The CVL Note matured on January 14, 2019 and is now in default.

1 (Id.) The Second CVL Note is payable on demand, but CVL has rejected the
2 Receiver's payment request. (Id.) The Second CVL Note is therefore likewise in
3 default.

4 Mr. Iannelli and Mr. Reyner were each obligated to make personal monetary
5 contributions to CVL. (See ECF No. 115-1 at 8:23-24.) At least some of
6 Mr. Iannelli's putatively "personal" contributions to CVL were made with funds
7 diverted from Essex. Specifically:

- 8 • On January 11, 2016, \$500,000 was transferred from an Essex account
9 at First Republic Bank to Mr. Iannelli's personal account at MBT. On
10 January 13, 2016, \$393,460 of this amount was transferred from
11 Mr. Iannelli's MBT account to CVL. (Winkler Decl. ¶ 6, Exs. 5, 6, 7.)
- 12 • On July 12, 2016, \$125,000 was transferred from an Essex account at
13 MBT to Mr. Iannelli's personal account at MBT. That same day, the
14 \$125,000 was transferred from Mr. Iannelli's MBT account to CVL.
15 (Winkler Decl. ¶ 7, Exs. 8, 9, 10.)
- 16 • On October 13, 2016, \$125,000 was transferred from an Essex account
17 at MBT to Mr. Iannelli's personal account at MBT. That same day, the
18 \$125,000 was transferred from Mr. Iannelli's MBT account to CVL.
19 (Winkler Decl. ¶ 8, Exs. 11, 12, 13.)

20 As concerns the present receivership, CVL's purchase of the Lumber Yard
21 was funded in substantial part by a \$1.5 million repayment obligation incurred by
22 Essex – not Mr. Iannelli or Mr. Reyner – to Mr. Gally, and at least \$643,000 in
23 funds diverted from Essex exclusively for Mr. Iannelli's and CVL's benefit. In other
24 words, over \$2.1 million in Essex funds and obligations are inextricably linked to
25 CVL and its purchase of the Lumber Yard, to say nothing of CVL's outstanding
26 repayment obligations to Essex.

27 In late September 2019, CVL filed its Motion to Intervene and to Remove
28 CVL's Assets from the Court-Ordered Freeze (the "Motion to Intervene") [ECF

1 Nos. 115, *et seq.*], in which it specifically requested that this Court release its
2 associated real property from the asset freeze imposed by the Permanent Injunction,
3 and suggested that – notwithstanding the significant amount of Essex funds
4 implicated in its acquisition of the Lumber Yard and Mr. Iannelli's personal
5 contribution to the entity. CVL's Motion to Intervene highlights CVL's intention to
6 obstruct the Receiver's efforts to recover the cash transferred to CVL from Essex in
7 the pre-receivership period (or to obtain the CVL interest purchased with those
8 funds) and to avoid its repayment obligation on, at least, the CVL Note and the
9 Second CVL Note. (See, *e.g.*, ECF No. 115-1 at 6:23-26 [characterizing the CVL
10 Note and Second CVL Note as "unenforceable"] and 17:24-18:1 [asserting that the
11 Receivership Entities have no claim for the return of Essex funds diverted by
12 Mr. Iannelli].)

13 **III. ARGUMENT.**

14 **A. This Court Should Exercise Its Discretion To Authorize The** 15 **Receiver To Commence Litigation Against CVL.**

16 As a preliminary matter, both the Appointment Order and the Permanent
17 Injunction already authorize the Receiver to "institute, pursue, and prosecute all
18 claims and causes of action ... that may now or hereafter exist as a result of the
19 activities of present or past employees of agents of [the Receivership Entities] and
20 "to institute ... such actions or proceedings ... which (i) the Receiver deems
21 necessary and advisable to preserve or recover any [receivership] Assets, or (ii) the
22 Receiver deems necessary and advisable to carry out the Receiver's mandate[.]"
23 (See ECF Nos. 66 at 9:4-13; 113 at 6:29-7:8.)

24 This grant of general litigation authority derives from the broad equitable
25 powers of the Court in the receivership context. "The power of a district court to
26 impose a receivership or grant other forms of ancillary relief does not in the first
27 instance depend on a statutory grant of power from the securities laws. Rather, the
28 authority derives from the inherent power of a court of equity to fashion effective

1 relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary
 2 purpose of equity receiverships is to promote orderly and efficient administration of
 3 the estate by the district court for the benefit of creditors." SEC v. Hardy, 803 F.2d
 4 1034, 1038 (9th Cir. 1986).

5 District courts have the broad discretion to determine the appropriate actions
 6 to be taken in the administration and supervision of an equity receivership. SEC v.
 7 Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). As the Ninth Circuit
 8 has explained:

9 A district court's power to supervise an equity receivership
 10 and to determine the appropriate action to be taken in the
 11 administration of the receivership is extremely broad. The
 12 district court has broad powers and wide discretion to
 13 determine the appropriate relief in an equity receivership.
 14 The basis for this broad deference to the district court's
 supervisory role in equity receiverships arises out of the
 fact that most receiverships involve multiple parties and
 complex transactions. A district court's decision
 concerning the supervision of an equitable receivership is
 reviewed for abuse of discretion.

15 Id. (citations omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107,
 16 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
 17 role, and 'we generally uphold reasonable procedures instituted by the district court
 18 that serve th[e] purpose' of orderly and efficient administration of the receivership
 19 for the benefit of creditors."). Accordingly, the Court has broad equitable powers
 20 and discretion in the context of the administration of the instant receivership,
 21 including broad power to authorize the Receiver to undertake litigation, when
 22 necessary and appropriate, to recover assets of the Receivership Entities.

23 **B. The Receiver's Claims Against CVL Are Appropriate.**

24 As noted above, the records obtained by the Receiver confirm that: (1) at
 25 least \$643,000 in Essex cash was transferred to CVL; (2) CVL's purchase of the
 26 Lumber Yard was financed in significant part by a loan taken by Essex – which,
 27 bizarrely, took no concomitant interest in CVL – and memorialized in the form of
 28 the Gally Note; and (3) CVL executed the CVL Notes in part to commit to the

1 repayment of the Gally Note but later disclaimed its repayment obligation, leaving
2 the estate of the Receivership Entities with a remaining obligation on the Gally Note
3 but without the intended funds to pay it. CVL's conduct therefore represents an
4 impermissible attempt to retain receivership assets wrongfully transmitted to CVL,
5 including in the form of the \$1.5 million Gally Note, and to avoid its substantial
6 repayment obligations, the rights to which are valuable assets of the Receivership
7 Entities.

8 In addition to the Receivership Entities' repayment rights, a dispute has arisen
9 by and between the Receiver and CVL as to the question of whether CVL or its
10 assets are subject to a constructive trust for the benefit of the Receivership Entities.
11 As reflected above, CVL has been the beneficiary of over \$2 million in Receivership
12 Entity cash and financing obligations, and, as CVL has previously itself admitted
13 (see, e.g., ECF No. 115-1 at 8 n. 3 [acknowledging Mr. Iannelli's interest in CVL]
14 and 9:14-15 [acknowledging the CVL Note and Second CVL Note]), Defendant
15 Ralph Iannelli, Essex's former principal, holds a substantial membership interest in
16 CVL, which interest the Receiver contends was acquired with Essex funds. The
17 Receivership Entity funds and obligations implicated in CVL's purchase of the
18 Lumber Yard, paired with Mr. Iannelli's interest in CVL, strongly suggest that CVL
19 and its assets should be subject to such a constructive trust.

20 The Receiver therefore respectfully submits that it is appropriate to
21 commence an action against CVL, in a manner consistent with the draft Complaint
22 attached hereto as **Exhibit A**, in order to prosecute claims intended to (1) void and
23 recover the transfer of at least \$643,000 in cash diverted from Essex to CVL;
24 (2) enforce defaulted notes issued by CVL in favor of Essex; and (3) obtain a
25 declaration from this Court that CVL and its assets are subject to a constructive trust
26 for the benefit of the Receivership Entities and their estate.¹

27
28 ¹ As reflected in the Receiver's proposed Complaint, he intends to allege causes of
action for Avoidance and Recovery of Actual Fraudulent Transfers; Avoidance

1 1. The Essex Funds transferred to CVL are subject to disgorgement.

2 Under California's Uniform Fraudulent Transfer Act, Cal. Civ. Code § 3439
3 *et seq.*, a transfer is subject to avoidance and recovery when made with (1) actual
4 intent to hinder, delay, or defraud a creditor; or (2) without receiving equivalent
5 value in exchange, where the debtor was either engaged or about to engage in a
6 transaction for which its remaining assets were unreasonably small, or intended,
7 believed, or reasonably should have believed that it would incur debts beyond its
8 ability to pay. Cal. Civ. Code § 3439.04(a). Where, as here, the transferring entities
9 made payments while engaged in a Ponzi-like investment scheme, intent to defraud
10 is presumed. In re Cohen, 199 B.R. 709,717 (B.A.P. 9th Cir. 1996); see also Donell
11 v. Kowell, 533 F.3d 762, 767 (9th Cir. 2007); In re AFI Holding, Inc., 525 F.3d 700,
12 704 (9th Cir. 2008). Federal equity receivers have standing to pursue fraudulent
13 transfer claims on behalf of entities in receivership. Donell, 533 F.3d at 776-777.

14 Here, the Receiver has confirmed that the operations of the Receivership
15 Entities were unsustainable absent continued inflows of funds from new investors,
16 the very definition of a Ponzi-like scheme. (See, e.g., ECF No. 103 at 14:1-16:12;
17 see also Donell, 533 F.3d at 767 n. 2.) He has also confirmed, as noted above, that
18 CVL received at least \$643,000 in transfers of Essex funds. Yet Essex took no
19 interest in CVL – indeed received no value whatsoever – in exchange for these
20 transfers. The transfers are therefore voidable, and the Receiver's proposed
21 disgorgement claim against CVL is proper.

22 2. CVL has breached its obligation to repay the CVL Note and
23 Second CVL Note.

24 In order to state a cause of action based on a breach of a contract, a plaintiff
25 must allege: (1) the existence of the contract; (2) full performance by the plaintiff;
26 (3) a breach by the defendant; and (4) resulting damages. First Commercial

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and Recovery of Constructively Fraudulent Transfers; Breach of Contract;
Unjust Enrichment; and Declaratory Relief.

1 Mortgage Co. v. Reece, 89 Cal.App.4th 731, 745 (2001). Here, the Receiver has
2 confirmed the existence of the CVL Note and Second CVL Note and has not
3 identified any performance failure by Essex. Nonetheless, CVL has failed to repay
4 the notes, to the Essex's substantial financial detriment. A breach of contract claim
5 against CVL to recover on the notes is therefore appropriate.

6 3. CVL and its assets should be held in constructive trust for the
7 benefit of the Receivership Entities.

8 As noted above, this Court has vested the Receiver with exclusive authority
9 and control over Essex and its subsidiaries and affiliates. In securities cases, courts
10 typically treat funds and assets derived from defrauded investors as held in
11 constructive trust for the benefit of the receivership. See, e.g., SEC v. Private
12 Equity Mgmt. Group, Inc., 2012 U.S. Dist. LEXIS 195213, *22-23 (C.D. Cal.
13 September 28, 2012) ("[T] Court concludes that considerations of expedience and of
14 preserving Receivership funds for distribution to the defrauded investors ... favor"
15 treating a receivership *res* as held in constructive trust for investors).

16 The Receiver respectfully suggests that here, Mr. Iannelli's ownership interest
17 (paid for with funds transferred from Essex) and the magnitude of the cash and
18 financing obligations that Essex deployed for CVL's unilateral benefit are strongly
19 indicative, if not dispositive, of affiliate status. Accordingly, a dispute has arisen
20 between the Receiver and CVL sufficient to merit a claim for declaratory relief to
21 determine whether, given the nature and amount of cash and financing obligations
22 incurred by Essex for CVL's benefit, CVL and its asset should be held in
23 constructive trust for the benefit of the Receivership Entities and their estate.

24 **C. The Receiver Will Endeavor To Minimize Litigation Fees And**
25 **Expenses.**

26 The Receiver has consulted with his counsel, Allen Matkins Leck Gamble
27 Mallory & Natsis LLP ("Allen Matkins"), and believes the legal fees and expenses
28 for the contemplated action could be as low as \$25,000, in the event of a prompt

1 settlement, and as much as \$250,000, in the event of a full trial. (Winkler Decl. ¶ 9.)
2 Based on the information presently available to him, the Receiver believes a full
3 trial is highly unlikely and the case will likely be resolved via settlement, or at
4 summary judgment, with legal fees and expenses under \$150,000. (Id.) As with all
5 matters, the Receiver and Allen Matkins will make every effort to minimize
6 administrative expenses associated with the proposed action. (Id.)

7 Throughout the litigation, the Receiver and Allen Matkins will continue to
8 monitor the costs and likely net benefit to the receivership estate. (Id.) In his
9 discretion, the Receiver may conduct asset investigations to aid in assessing
10 collectability of a judgment. (Id.)

11 After reviewing the available evidence, weighing the merits of the proposed
12 claims against CVL, and assessing the anticipated costs of litigation and likelihood
13 of success and collectability, the Receiver believes, in his reasonable business
14 judgment, that it is in the best interest of the receivership estate to pursue such
15 claims, and respectfully requests the Court issue an order authorizing him to do so.
16 (Id. at ¶ 10.)

17 **IV. CONCLUSION.**

18 Based on the foregoing, the Receiver respectfully requests that this Court
19 grant the instant Motion, and enter an order authorizing the Receiver to commence
20 litigation against CVL, in a form consistent with the draft Complaint appended
21 hereto as **Exhibit A.**

22
23 Dated: December 5, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
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14 GEOFF WINKLER, RECEIVER

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 GEOFF WINKLER, RECEIVER,

18 Plaintiff,

19 v.

20 915 ELM AVENUE CVL, LLC,

21 Defendant.

Case No.

COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF

22 Plaintiff Geoff Winkler (the "Receiver"), the Court-appointed permanent
23 receiver for Essex Capital Corporation ("Essex") and its subsidiaries and affiliates
24 (collectively, with Essex, the "Receivership Entities" or "Entities"), hereby brings
25 the following complaint (the "Complaint") against the above-captioned Defendant
26 and, on behalf of the Receivership Entities, alleges as follows:

27 **JURISDICTION AND VENUE**

28 1. This Court has jurisdiction over this matter under 28 U.S.C. Sections
1345 and 1367(a), and the doctrines of ancillary and supplemental jurisdiction, in
that this action arises from a common nucleus of operative facts as, and is
substantially related to the original claims in, the pending Securities and Exchange
Commission (the "Commission") enforcement action, styled *SEC v. Ralph Iannelli*

1 *and Essex Capital Corp.*, USDC, C.D. Cal. Case No. 2:18-cv-05008-FMO-AFM
2 (the "Enforcement Action").

3 2. This Court may exercise personal jurisdiction over the above-captioned
4 Defendant pursuant to Federal Rule of Civil Procedure 4(k)(1)(A).

5 3. Venue in the Central District of California is proper under 28 U.S.C.
6 Section 1391 because this action is an ancillary proceeding to the Enforcement
7 Action and because the Receiver was appointed in this District pursuant to the
8 Court's previously entered "Order Regarding Preliminary Injunction and
9 Appointment of a Permanent Receiver" (the "Appointment Order") in the
10 Enforcement Action, which specifically authorized the Receiver "to institute,
11 pursue, and prosecute all claims and causes of action of whatever kind and nature
12 that may now or hereafter exist as a result of the activities of" the Receivership
13 Entities. This Court's September 9, 2019 "Order Regarding Permanent Injunction"
14 (the "Permanent Injunction") in the Enforcement Action reaffirmed the Receiver's
15 authority.

16 **PARTIES**

17 4. The Receiver is the duly-appointed permanent receiver for the
18 Receivership Entities. Among other things, the Appointment Order directs the
19 Receiver to recover and marshal, for the benefit of creditors of, and investors in, the
20 Receivership Entities, any and all assets which were owned, leased, occupied, or
21 otherwise controlled by the Receivership Entities. The Permanent Injunction
22 reaffirmed the Receiver's duties and obligations. Pursuant to the Appointment
23 Order and the Permanent Injunction, the Receiver enjoys exclusive authority and
24 control over the assets of the Receivership Entities, including over the causes of
25 action alleged herein.

26 5. On information and belief, Defendant 915 Elm Avenue CVL, LLC
27 ("CVL") is a California limited liability company, formed in 2015, with its principal
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1 place of business listed as 915 Elm Avenue, Carpinteria, California 93013 (the
2 "CVL Address").

3 **FACTUAL ALLEGATIONS**

4 **I. The Establishment of the Receivership Entities and Their**
5 **Misappropriation of Investor Funds.**

6 6. As alleged by the Commission in its June 3, 2019 Complaint in the
7 Enforcement Action (the "SEC Complaint"), Ralph Iannelli ("Iannelli") has been
8 Essex's sole shareholder and president and chief executive officer since
9 approximately 1996.

10 7. As alleged by the Commission in the SEC Complaint, Mr. Iannelli
11 attracted investment into Essex through the sale of promissory notes, the returns on
12 which were alleged to be based on the strength of Essex's equipment leasing
13 business, pursuant to which Essex's lease portfolio would generate sufficient income
14 to fully offset its borrowing costs and obligations to noteholders.

15 8. As alleged by the Commission in the SEC Complaint, between 2014
16 and early 2017, Essex's main source of funding was money that it received from
17 investor-funded promissory notes and investor-funded LLC's, not income or revenue
18 derived from its equipment leasing business.

19 9. As alleged by the Commission in the SEC Complaint, Essex was
20 unable to cover the principal and interest obligations that it owed to its investors and
21 creditors using lease revenue alone. As alleged by the Commission, payments on
22 existing obligations were instead made in large part from new money, in a manner
23 consistent with a Ponzi-like scheme.

24 10. Based on his review and analysis of the available business and financial
25 records of the Receivership Entities, the Receiver has concluded that the
26 Commission's allegations regarding Essex's unlawful conduct are essentially
27 accurate, and that Essex and other Receivership Entities were used to operate a
28 Ponzi-like investment scheme.

1 **II. The Establishment of CVL.**

2 11. On information and belief, Mr. Iannelli and William S. Reyner, Jr.
3 established CVL in or around November 2015 in order to purchase a business
4 operation and associated real property located at the CVL Address (collectively, the
5 "Lumber Yard") from J&G Clay Properties, LLC and its principal, James Gally
6 (collectively, "Mr. Gally").

7 12. CVL's purchase of the Lumber Yard was financed, in significant part,
8 via a seller carryback note (the "Gally Note") issued by Essex to Mr. Gally, on or
9 around January 14, 2016, in the principal amount of \$1,500,000.

10 13. Pursuant to the terms of the Gally Note, Essex was obligated to pay
11 \$250,000 of the Gally Note's principal balance on January 14, 2017, and the
12 remaining principal balance of \$1,250,000 on January 14, 2019.

13 14. Essex paid approximately \$453,683.56 to Mr. Gally in connection with
14 its obligation on the Gally Note in the period prior to the Receiver's appointment.
15 Essex remains obligated to Mr. Gally pursuant to the terms of the Gally Note and it
16 is expected that Mr. Gally will submit a claim to recover on the Gally Note as part
17 of the receivership claims process.

18 15. CVL executed a companion note to the Gally Note (the "CVL Note"),
19 on or around January 14, 2016, whereby CVL agreed to pay Essex \$1,500,000 on
20 January 14, 2019, the maturity date of the Gally Note.

21 16. On information and belief, the CVL Note was intended to repay Essex
22 for its extension of credit and obligation to repay the Gally Note. Since his
23 appointment, the Receiver has demanded that CVL pay the CVL Note.

24 17. The CVL Note matured on January 14, 2019 and is presently in default.

25 18. On or around October 14, 2016, CVL issued Essex a second note (the
26 "Second CVL Note") in the principal amount of \$125,000, the balance of which is
27 due on demand.

28 19. The Receiver has demanded payment of the Second CVL .

1 20. CVL has rejected the Receiver's payment demand on the Second CVL
2 Note.

3 21. CVL has disclaimed its repayment obligations arising in connection
4 with the CVL Note and the Second CVL Note.

5 22. Both the CVL Note and the Second CVL Note are presently in default.

6 23. As detailed herein, and on the basis of his review and analysis of the
7 business and financial records of the Receivership Entities, and records relating to
8 the business and financial activities of the Receivership Entities, the Receiver has
9 concluded that at least \$643,000 in Essex funds were diverted to CVL in connection
10 with CVL's purchase and administration of the Lumber Yard.

11 24. On or around January 11, 2016, \$500,000 was transferred from an
12 account held by Essex at First Republic Bank an account held by Mr. Iannelli at
13 Montecito Bank & Trust ("MBT").

14 25. On information and belief, on or around January 13, 2016, \$393,460 of
15 the \$500,000 referenced in Paragraph 25, above, was transferred from Mr. Iannelli's
16 MBT account to CVL.

17 26. On or around July 12, 2016, \$125,000 was transferred from an account
18 held by Essex at MBT to Mr. Iannelli's personal account at MBT.

19 27. On information and belief, on or around July 12, 2016, the \$125,000
20 referenced in Paragraph 27, above, was transferred from Mr. Iannelli's MBT
21 account to CVL.

22 28. On or around October 13, 2016, \$125,000 was transferred from an
23 account held by Essex at MBT to Mr. Iannelli's personal account at MBT.

24 29. On information and belief, the \$125,000 referenced in Paragraph 29,
25 above, was transferred from Mr. Iannelli's MBT account to CVL o.

26 30. Accordingly, and inclusive of Essex's repayment obligation on the
27 Gally Note, over \$2,100,000 in Essex funds and obligations were used and incurred
28 for CVL's purchase or administration of the Lumber Yard.

1 31. Despite the use of Essex funds and the incurrence of a substantial Essex
2 obligation in connection with CVL's purchase or administration of the Lumber
3 Yard, Essex has no memorialized legal, financial, or other interest in CVL or the
4 Lumber Yard.

5 32. On information and belief, the current members of CVL are: (1) The
6 William S. Reyner, Jr. Trust [29.64% membership interest]; (2) Reyner Family
7 Partners, L.P. [29.64% membership interest]; (3) William S. Reyner III [1%
8 membership interest]; (4) Ralph Iannelli [39.04% membership interest]; and
9 (5) Ralph T. Iannelli, III [0.68% membership interest].

10 **COUNT I – AVOIDANCE AND RECOVERY OF ACTUAL**
11 **FRAUDULENT TRANSFERS**

12 **(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07)**

13 33. The Receiver incorporates herein each and every allegation contained
14 in Paragraphs 1 through 32, inclusive, set forth above.

15 34. On the basis of his investigation and analysis of its business operations
16 and financial affairs, the Receiver has concluded that Essex operated a Ponzi-like
17 scheme, and was insolvent, or became insolvent, shortly after the subject
18 transactions occurred.

19 35. On information and belief, Essex, while still under the control of
20 Mr. Iannelli, fraudulently transferred at least \$643,000, in the aggregate, to CVL
21 with the intent to hinder, delay, and/or defraud Essex's investors and creditors.

22 36. On information and belief, these transfer payments were made from the
23 proceeds of the Ponzi-like scheme operated by Essex, and were generated from the
24 investors in, and creditors of, that scheme.

25 37. On information and belief, Essex's conduct was a substantial factor in
26 causing harm to the estate of the Receivership Entities.

27 38. On information and belief, the estate of the Receivership Entities,
28 which the Receiver is charged with administering, has been harmed as a result of

1 these actually fraudulent transfers in the amount of at least \$643,000, to be proven at
2 trial, which amount is subject to immediate avoidance and disgorgement to the
3 Receiver, in his capacity as receiver for the Receivership Entities.

4 39. On information and belief, the creditors of, and investors in, the
5 Receivership Entities, as well as estate of the Receivership Entities, have been
6 harmed as a result of these actually fraudulent transfers in the amount of at least
7 \$643,000, to be proven at trial, which amount is subject to immediate avoidance and
8 disgorgement to the Receiver, in his capacity as receiver for the Receivership
9 Entities.

10 **COUNT II – AVOIDANCE AND RECOVERY OF CONSTRUCTIVELY**
11 **FRAUDULENT TRANSFERS**

12 **(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07)**

13 40. The Receiver incorporates herein each and every allegation contained
14 in Paragraphs 1 through 39, inclusive, set forth above.

15 41. On information and belief, Essex, while still under the control of
16 Mr. Iannelli, fraudulently transferred at least \$643,000, in the aggregate, to CVL
17 with the intent to hinder, delay, and/or defraud Essex's creditors.

18 42. On information and belief, neither Essex, nor any of the Receivership
19 Entities received reasonably equivalent value in exchange for any of its transfers to
20 CVL.

21 43. On information and belief, at all relevant times, Essex intended to
22 incur, or reasonably should have believed that it would incur, debts beyond its
23 ability to pay as they became due.

24 44. On information and belief, at all relevant times, Essex was engaged in,
25 or about to engage in, business transactions for which its remaining assets were
26 unreasonably small in relation to the business transactions.

27 45. On information and belief, Essex's conduct was a substantial factor in
28 causing harm to the estate of the Receivership Entities.

1 46. On information and belief, the estate of the Receivership Entities,
2 which the Receiver is charged with administering, has been harmed as a result of
3 these fraudulent transfers in the amount of at least \$643,000, to be proven at trial,
4 which amount is subject to immediate avoidance and disgorgement to the Receiver,
5 in his capacity as receiver for the Receivership Entities.

6 47. On information and belief, the creditors of, and investors in, the
7 Receivership Entities, as well as the estate of the Receivership Entities, have been
8 harmed as a result of these actually fraudulent transfers in the amount of at least
9 \$643,000, to be proven at trial, which amount is subject to immediate avoidance and
10 disgorgement to the Receiver, in his capacity as receiver for the Receivership
11 Entities.

12 **COUNT III – BREACH OF CONTRACT**

13 **(as against CVL)**

14 48. The Receiver incorporates herein each and every allegation contained
15 in Paragraphs 1 through 47, inclusive, set forth above.

16 49. On information and belief, the CVL Note represents a contract between
17 Essex, on the one hand, and CVL, on the other hand. A true and correct copy of the
18 CVL Note is appended hereto as **Exhibit 1**, and incorporated herein by reference.

19 50. Essex performed all of its obligations under the CVL Note.

20 51. On information and belief, CVL was obligated to pay Essex \$1,500,000
21 on January 14, 2019, pursuant to the CVL Note.

22 52. CVL has disclaimed its repayment obligations arising in connection
23 with the CVL Note, and has failed to make any payment whatsoever to Essex in
24 connection with the CVL Note, thereby breaching its contractual obligations.

25 53. CVL's breach of the CVL Note was a substantial factor in causing harm
26 to the estate of the Receivership Entities, over which the Receiver has been vested
27 with exclusive authority and control.

28

1 54. As a consequence, the estate of the Receivership Entities has been
2 harmed and suffered damages in the amount of at least \$1,500,000, to be proven at
3 trial.

4 **COUNT IV – BREACH OF CONTRACT**

5 **(as against CVL)**

6 55. The Receiver incorporates herein each and every allegation contained
7 in Paragraphs 1 through 54, inclusive, set forth above.

8 56. On information and belief, the Second CVL Note represents a contract
9 between Essex, on the one hand, and CVL, on the other hand. A true and correct
10 copy of the Second CVL Note is appended hereto as **Exhibit 2**, and incorporated
11 herein by reference.

12 57. Essex performed all of its obligations under the Second CVL Note.

13 58. On information and belief, CVL was obligated to pay Essex \$125,000,
14 on demand, pursuant to the Second CVL Note.

15 59. As reflected in Paragraph 20, above, the Receiver has demanded
16 payment of the Second CVL Note.

17 60. CVL has rejected the Receiver's payment demand on the Second CVL
18 Note.

19 61. CVL has disclaimed its repayment obligations arising in connection
20 with the Second CVL Note, and has failed to make any payment whatsoever to
21 Essex in connection with the Second CVL Note, thereby breaching its contractual
22 obligations.

23 62. CVL's breach of the Second CVL Note was a substantial factor in
24 causing harm to the estate of the Receivership Entities, over which the Receiver has
25 been vested with exclusive authority and control.

26 63. As a consequence, the estate of the Receivership Entities has been
27 harmed and suffered damages in the amount of at least \$125,000, to be proven at
28 trial.

1 **COUNT V – UNJUST ENRICHMENT**

2 **(as against CVL)**

3 64. The Receiver incorporates herein each and every allegation contained
4 in Paragraphs 1 through 63, inclusive, set forth above.

5 65. As described in more detail above, over \$2,100,000 in Essex funds and
6 obligations were used and incurred, respectively, for CVL's purchase or
7 administration of the Lumber Yard, which conferred exclusive direct benefit upon
8 CVL and its members, but not Essex.

9 66. Despite the use of Essex funds and the incurrence of a substantial Essex
10 repayment obligation in connection with CVL's purchase or administration of the
11 Lumber Yard, Essex has no memorialized legal, financial, or other interest in CVL
12 or the Lumber Yard.

13 67. Essex did not receive funds or monetary benefits from CVL. CVL did
14 not issue the CVL Note or the Second CVL Note in good faith, and has disclaimed
15 any repayment obligations arising in connection therewith.

16 68. Essex did not receive reasonably equivalent value or consideration in
17 exchange for the funds it transferred, through Mr. Iannelli, to CVL, or the
18 repayment obligation it incurred for CVL's benefit.

19 69. Accordingly, CVL has been unjustly enriched in the amount of at least
20 \$2,100,000, to be proven at trial, which amount is subject to immediate
21 disgorgement to the Receiver.

22 **COUNT VI – DECLARATORY RELIEF**

23 **(as against CVL)**

24 70. The Receiver incorporates herein each and every allegation contained
25 in Paragraphs 1 through 69, inclusive, set forth above.

26 71. On information and belief, over \$2,100,000 in Essex funds and
27 obligations were used and incurred, respectively, for CVL's purchase or
28

1 administration of the Lumber Yard, which conferred an exclusive benefit upon
2 CVL, and not Essex.

3 72. Despite the use of Essex funds and the incurrence of an Essex
4 obligation for CVL's unilateral benefit, Essex has no memorialized legal, financial,
5 or other interest in CVL or the Lumber Yard.

6 73. Given the magnitude of the cash and financing obligation that Essex
7 deployed for CVL's unilateral benefit, the Receiver has determined, exercising his
8 reasonable business judgment, that that CVL is an affiliated entity of Essex.

9 74. Accordingly, on information and belief, the members of CVL, by virtue
10 of causing Essex to expend funds and incur an obligation that did not inure to its
11 benefit, obtained ownership of CVL by wrongful acts.

12 75. The Receiver, therefore, desires and requests a judicial determination
13 and declaration of the respective rights, duties, and obligations of CVL and the
14 Receiver with respect to the contentions set forth above. Such determination and
15 declaration is necessary and appropriate at this time so that the respective rights,
16 duties, and obligations of the parties are ascertained and complied with on a current
17 and going forward basis, and to resolve any potential future claims between the
18 parties. Specifically, the Receiver desires and requests a judicial determination and
19 declaration that CVL and its assets are held in constructive trust for the benefit of
20 the Receivership Entities and their estate.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Receiver prays for judgment against CVL as follows:

23 **On Count I:**

24 A. For a judgment against CVL in an amount of at least \$643,000, which
25 amount may be amended based on proof at trial, plus pre-judgment interest and
26 costs;

27 B. For an order directing CVL to immediately disgorge to the Receiver the
28 amount of all funds it received from Essex, in an amount of at least \$643,000, which

1 amount may be amended based on proof at trial, plus pre-judgment interest and
2 costs; and

3 C. For such other and further relief as the Court may deem proper.

4 **On Count II:**

5 A. For a judgment against CVL in an amount of at least \$643,000, which
6 amount may be amended based on proof at trial, plus pre-judgment interest and
7 costs;

8 B. For an order directing CVL to immediately disgorge to the Receiver the
9 amount of all funds it received from Essex, in an amount of at least \$643,000, which
10 amount may be amended based on proof at trial, plus pre-judgment interest and
11 costs; and

12 C. For such other and further relief as the Court may deem proper.

13 **On Count III:**

14 A. For a judgment against CVL in an amount of at least \$1,500,000, which
15 amount may be amended based on proof at trial, plus pre-judgment interest and
16 costs;

17 B. For such other and further relief as the Court may deem proper.

18 **On Count IV:**

19 A. For a judgment against CVL in an amount of at least \$125,000, which
20 amount may be amended based on proof at trial, plus pre-judgment interest and
21 costs;

22 B. For such other and further relief as the Court may deem proper.

23 **On Count V:**

24 A. For a judgment against CVL in an amount of at least \$2,100,000, which
25 amount may be amended based on proof at trial, plus pre-judgment interest and
26 costs;

27 B. For an order directing CVL to immediately disgorge to the Receiver the
28 amount of all funds it received from Essex, in an amount of at least \$2,100,000,

1 which amount may be amended based on proof at trial, plus pre-judgment interest
2 and costs; and

3 C. For such other and further relief as the Court may deem proper.

4 **On Count VI:**

5 A. For a judgment declaring CVL and its assets to be held in constructive
6 trust for the benefit of the Receivership Entities and their estate, over which the
7 Receiver has been vested with exclusive authority and control; and

8 B. For such other and further relief as the Court may deem proper.

9
10 Dated:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

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13 By: _____

JOSHUA A. DEL CASTILLO
Attorneys for Plaintiff
GEOFF WINKLER, RECEIVER

Draft

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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 **December 5, 2019**, I caused to be served the document entitled: **NOTICE OF MOTION AND MOTION OF RECEIVER, GEOFF WINKLER, FOR AUTHORITY TO PURSUE LITIGATION AGAINST 915 ELM AVENUE CVL, LLC; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** 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 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 **December 5, 2019** 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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