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MICHAEL D. NAPOLI (*admitted pro hac vice*)
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Attorneys for Intervenors JOHN PERRY,
AND PAUL WOLANSKY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RALPH IANNELLI and ESSEX
CAPITAL CORPORATION,

Defendants.

Case No. 2:18-cv-05008

DECLARATION OF MICHAEL D.
NAPOLI IN SUPPORT OF
INTERVENORS PERRY AND
WOLANSKY’S NOTICE OF MOTION
AND MOTION TO LIFT THE
DECEMBER 21, 2018 STAY ORDER
WITH RESPECT TO THE PENNY
LANE AND CENTRAL PARK
PROPERTIES

Hearing Date:

Date: January 23, 2020

Time: 10:00 a.m.

Crtrm.: 6D

Judge: Hon. Fernando M. Olguin

AKERMAN LLP

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1 I, MICHAEL D. NAPOLI declare that:

2 1. I am attorney, duly licensed to practice law in all courts in the State of
3 Texas. I am a partner at the law firm of AKERMAN, LLP, attorneys of record for
4 the Intervenor John Perry and Paul Wolansky (“Intervenor”) in this action. I have
5 been granted permission to appear *pro hac vice* on behalf of the Intervenor in this
6 action. (ECF No. 88).

7 2. The following facts are stated from my personal knowledge, except for
8 those facts stated on information and belief, which I believe to be true, and if called
9 as a witness I could and would so competently testify thereto under oath.

10 3. This declaration is made in support of the Intervenor’s Motion to Lift
11 the December 21, 2018 Stay Order With Respect to the Penny Lane And Central
12 Park Properties (“Motion”).

13 4. Prior to filing the Motion, I have made multiple attempts to informally
14 resolve this matter with the receiver’s counsel, David Zaro of Allen Matkins Leck
15 Gamble Mallory and Natsis LLP, as evidenced by the attached emails. The attached
16 emails are merely examples of the Intervenor’s informal resolution efforts.
17 Attached hereto as Exhibit “A” are true and correct copies of my meet and confer
18 emails to Mr. Zaro dated June 27, 2019, July 30, 2019, September 4, 2019, October
19 9, 2019, October 21, 2019, November 25, 2019, December 4, 2019, December 16,
20 2019, and December 20, 2019. I have also made several attempts to confer with
21 Gary Leung, counsel for the Securities and Exchange Commission as evidence by
22 my e-mails of December 16 and December 20, 2019.

23 5. The Intervenor’s meet and confer efforts were unsuccessful.

24 I declare under penalty of perjury under the laws of the United States and
25 State of Texas that the foregoing is true and correct. Executed this 26th day of
26 December 2019, at Dallas, Texas.

27 By: /s/ Michael D. Napoli
28 Michael D. Napoli - DECLARANT

EXHIBIT A

Corder, Carol (LAA-Lax)

From: Napoli, Michael (Ptnr-Dal) <michael.napoli@akerman.com>
Sent: Thursday, June 27, 2019 2:01 PM
To: Zaro David R.
Cc: Miller, Brian (Ptnr-Mia)
Subject: Essex

Dave

Any news? Want to follow up on all three of my guys. As a reminder, we're trying to deal with Penny Lane and the co-op in NY as well as Grant/Amaganset.

Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Friday, December 20, 2019 8:47 AM
To: dzaro@allenmatkins.com; leungg@sec.gov
Cc: brian.miller@akerman.com; ellen.robbins@akerman.com
Subject: RE: Essex -- Wolansky and Perry

Gentlemen

I am following up on my e-mail below. My clients would still like to resolve these issues by agreement.

Michael Napoli

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michael.napoli@akerman.com

From: michael.napoli@akerman.com <michael.napoli@akerman.com>
Sent: Monday, December 16, 2019 6:44 PM
To: dzaro@allenmatkins.com; leungg@sec.gov
Cc: brian.miller@akerman.com; ellen.robbins@akerman.com
Subject: FW: Essex -- Wolansky and Perry

David, Gary

I'm following up on my long-standing discussions with David regarding the Penny Lane house and the NY Co-Op. We plan to move to lift the freeze on these assets so that Perry and Wolansky can foreclose and try to recover some of the millions of dollars they've lost to Iannelli. The facts strongly support lifting the freeze and the assets continue to be at risk requiring action sooner rather than later.

- Perry and Wolansky have duly perfected security interests in the house (Perry) and Co-Op (Wolansky).
- Neither property is an estate asset; rather they are Iannelli's personal assets. Both are subject to the freeze order.
- Iannelli owes Perry and Wolansky millions of dollars each. He owes Perry \$3+ million secured by the house and Wolansky more than \$4 million of which \$2.2 million is secured by the Co-Op.
- Both Perry and Wolansky are significant net losers on a cash-in, cash-out basis with the estate as the accountings we've previously provided show. Perry is a net loser by about \$1.6 million and Wolansky is a net loser by about \$3.6 million.
- Neither property has value in excess of the liens on it.
 - Per our appraisal, Penny Lane is worth about \$4.175 million. Chase's first two liens (Perry has a third lien) are roughly \$3.133 million leaving \$1.042 million to cover Perry's debt. The Chase liens incur interest and escrow charges in excess of \$14,000 per month so Perry's potential recovery is slipping away.
 - Per our appraisal, the Co-Op is worth about \$2 million or \$200K less than Iannelli owes Wolansky.

- We (David and I) have been discussing these issues for a long time. We've made complete disclosure, provided accountings and been as cooperative as possible.

As I've mentioned previously, we'd like to reach agreement with the Receiver/Commission and do this without opposition. But, my clients cannot wait much longer. Neither is particularly enthused about continuing their court-ordered subsidy of Iannelli's bi-coastal Central Park West lifestyle.

So that you can see our cards, I'm attaching the draft motion, and draft declarations. You can get the proposed exhibits by clicking on the link below. I look forward to hearing from you both.

Click the following link to download your file(s).

[Click to Retrieve File\(s\)](#)

Perry Exhs.zip
Wolansky Exhs.zip

If the above link is not clickable, copy and paste the following URL into your browser.

<https://www.sendthisfile.com/5yQ3E0rRackDrvX89yUVIbW6>

Note: These files will expire in 14 days from the time this email was generated.

Michael Napoli

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D: 214-720-4360 | F: 214 720 8116
michael.napoli@akerman.com

From: michael.napoli@akerman.com <michael.napoli@akerman.com>

Sent: Wednesday, December 4, 2019 5:28 PM

To: dzaro@allenmatkins.com

Cc: brian.miller@akerman.com

Subject: Essex -- Wolansky and Perry

David

We need to get to a resolution on Perry and Wolansky. As I mentioned before Thanksgiving, the burn rate on the Penny Lane house is about \$10,000/month and the "sales season" is approaching. Similarly, the market value of the NY condo is softening. We really can't wait any longer. To that end, we will be filing a motion to lift the freeze so that my guys can foreclose on the house and condo. As neither of these properties are estate assets, I'm not sure that the Receiver really has a position on this but we'd like to do it by agreement or at least without your opposition. I plan to file sometime next week – probably Wednesday-ish.

I'm going to ABI this week so I'm out tomorrow and Friday. You can always reach me on my cell (214.682.2959) or by e-mail if you'd like to talk.

Michael Napoli

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Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Wednesday, December 4, 2019 3:28 PM
To: dzaro@allenmatkins.com
Cc: brian.miller@akerman.com
Subject: Essex -- Wolansky and Perry

David

We need to get to a resolution on Perry and Wolansky. As I mentioned before Thanksgiving, the burn rate on the Penny Lane house is about \$10,000/month and the “sales season” is approaching. Similarly, the market value of the NY condo is softening. We really can’t wait any longer. To that end, we will be filing a motion to lift the freeze so that my guys can foreclose on the house and condo. As neither of these properties are estate assets, I’m not sure that the Receiver really has a position on this but we’d like to do it by agreement or at least without your opposition. I plan to file sometime next week – probably Wednesday-ish.

I’m going to ABI this week so I’m out tomorrow and Friday. You can always reach me on my cell (214.682.2959) or by e-mail if you’d like to talk.

Michael Napoli

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Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Monday, November 25, 2019 9:19 AM
To: dzaro@allenmatkins.com
Cc: brian.miller@akerman.com
Subject: RE: Essex

David

We weren't able to catch up last week. Are you available this week? I'm generally around until about 3 pm Central on Wednesday.

Michael Napoli

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michael.napoli@akerman.com

From: Zaro, David <dzaro@allenmatkins.com>
Sent: Wednesday, November 20, 2019 4:38 PM
To: Napoli, Michael (Ptnr-Dal) <michael.napoli@akerman.com>
Cc: Miller, Brian (Ptnr-Mia) <brian.miller@akerman.com>
Subject: RE: Essex

Hi Michael

I agree, I think we are in a position to discuss a resolution.
I need to speak with Geoff (Winkler) but will you be around tomorrow?
Thanks
David

From: michael.napoli@akerman.com [<mailto:michael.napoli@akerman.com>]
Sent: Wednesday, November 20, 2019 12:36 PM
To: Zaro, David <dzaro@allenmatkins.com>
Cc: brian.miller@akerman.com
Subject: Essex

David

I see that you have your latest quarterly report out, CVL more or less humming along, Garipalli settled and are ready to move to claims and claw backs. It seems like an auspicious time to resolve my clients' issues.

- Geoff Grant – We need to finally resolve his accounting. Based on the Receiver's calculations and our calculations, Grant is a significant net loser (\$3.6 million) prior to Amagansett. I've attached the latest reconciliation between Grant's accounting and the Receiver's. While we can discuss the Amagansett investments (the ones that actually transferred), Grant has also put in a tremendous amount of money supporting those investments.
- John Perry – We need to finalize his accounting as well. My recollection is that there were a few of his investments that you could not identify in Essex's records. If you can provide us

with a list, I'm sure that we can provide additional information and documents to enable you to find them in Essex's records.

In the meantime, we have learned that Chase send a default notice to Iannelli on the Penny Lane house. According to records Iannelli provided, the "burn" rate on the Chase loans and taxes exceeds \$10,000 per month. So we need to resolve these issues sooner rather than later.

- Paul Wolansky – As I understand it, we are in agreement that Paul is a significant net loser. Can we get to an agreement to lift the freeze on the condo so that Paul can foreclose?

I look forward to hearing from you.

Michael Napoli

Partner

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Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Monday, October 21, 2019 3:23 PM
To: dzaro@allenmatkins.com
Subject: Essex -- Perry
Attachments: lannelli Chase Mortgage Balance Summary 2019-07-24.PDF; Penny Lane Mortgage-HELOC @ 01Aug2019.PDF

David

It was good to put a name with a face at NAFER last weekend.

I wanted to follow up on Perry. As you can see from the attachments, the Chase mortgages are accruing \$10,282.55 per month in interest alone. The escrow is another \$3,952.79 per month. And, there is significant deferred maintenance which further reduces the value of the house. This will only increase as time passes. As we've discussed, there is not an enormous amount of equity in the house after the Chase mortgages. So, it is important to Perry that we are able to move forward with a sale of the house – either agreed or by foreclosure.

To that end, can you tell me which of Perry's investments the Receiver is unable to verify so that we can provide additional information?

Michael Napoli

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Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Wednesday, October 9, 2019 9:29 AM
To: dzaro@allenmatkins.com
Cc: brian.miller@akerman.com
Subject: Essex

David

We need to talk. All three of my clients are in limbo owed information by the Receiver.

- Wolansky – Is the Receiver going to contest his lien on the co-op? Wolansky would like to foreclose on the co-op and plans to move to lift the freeze in order to do so.
- Perry – Exactly which of Perry’s investments are you unable to confirm from your records? You have a list; send it to me. You promised this information over a week ago. We need to get Perry’s issues resolved as the house is continuing to lose equity.
- Grant – You promised an updated accounting taking into account the investments you concede he made. As the Receiver’s previous accounting shows him to be a \$3+ million net loser pre-Amagansett after taking into account the conceded investments, we need to understand your continued claim that he was a net winner pre-Amagansett.

I’m out of the office this afternoon but around all day tomorrow.

Michael Napoli

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Corder, Carol (LAA-Lax)

From: brian.miller@akerman.com
Sent: Wednesday, September 4, 2019 4:25 PM
To: michael.napoli@akerman.com; dzaro@allenmatkins.com
Subject: RE: John Perry

Also, let's set up a call tomorrow or Friday to discuss global next steps and path forward, to follow up on my in-person meeting. I'm fairly flexible California time, other than I have a deposition on Friday that will take until around 11 a.m. California time. Thanks.

Brian

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From: Napoli, Michael (Ptrn-Dal) <michael.napoli@akerman.com>
Sent: Wednesday, September 4, 2019 7:10 PM
To: David R. Zaro - Allen Matkins Leck Gamble Mallory & Natsis LLP (dzaro@allenmatkins.com) <dzaro@allenmatkins.com>
Cc: Miller, Brian (Ptrn-Mia) <brian.miller@akerman.com>
Subject: John Perry

David

Can we get the Receiver's accounting for Perry? We need to move forward on the Penny Lane house before Chase's mortgages eat all of the value.

Michael Napoli

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michael.napoli@akerman.com

Corder, Carol (LAA-Lax)

From: michael.napoli@akerman.com
Sent: Tuesday, July 30, 2019 3:25 PM
To: dzaro@allenmatkins.com
Cc: brian.miller@akerman.com
Subject: RE: Essex

Say 9:30 your time?

Michael Napoli

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michael.napoli@akerman.com

From: Zaro, David <dzaro@allenmatkins.com>
Sent: Tuesday, July 30, 2019 4:51 PM
To: Napoli, Michael (Ptrn-Dal) <michael.napoli@akerman.com>
Cc: Miller, Brian (Ptrn-Mia) <brian.miller@akerman.com>
Subject: RE: Essex

Hi
Sure, how about Thursday? I am free most of the day.
Thanks
David

From: michael.napoli@akerman.com [<mailto:michael.napoli@akerman.com>]
Sent: Tuesday, July 30, 2019 12:37 PM
To: Zaro, David <dzaro@allenmatkins.com>
Cc: brian.miller@akerman.com
Subject: Essex

David

Do you have some time this week for a chat? I have a proposal regarding Iannelli's house and co-op to run by you guys. We are still crunching numbers but its baked enough to preview to you guys. I'd like to get the ball rolling before I leave for vacation on Friday.

Michael Napoli

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