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 8 GEOFF WINKLER

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

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

16 RALPH T. IANNELLI and ESSEX
 17 CAPITAL CORP.,

18 Defendants.

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

RESPONSE OF RECEIVER, GEOFF
 WINKLER, TO INTERVENORS'
 MOTION TO LIFT THE
 DECEMBER 21, 2018 STAY ORDER
 WITH RESPECT TO THE PENNY
 LANE AND CENTRAL PARK
 PROPERTIES [DKT NO. 130]

Date: January 23, 2020
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

22 **TO ALL INTERESTED PARTIES:**

23 **PLEASE TAKE NOTICE THAT** Geoff Winkler (the "Receiver"), the
 24 Court-appointed permanent receiver for Defendant Essex Capital Corporation
 25 ("Essex") and its subsidiaries and affiliates (collectively, with Essex, the
 26 "Receivership Entities" or "Entities"), hereby responds to the Motion to Lift the
 27 December 21, 2018 Stay Order With Respect to the Penny Lane and Central Park
 28

1 Properties (the "Motion") of limited-purpose intervenors John Perry and Paul
2 Wolansky, as follows:

3 **I. ARGUMENT.**

4 **A. The Receiver's Accounting And Analysis Of The Business And**
5 **Financial Activities Of The Receivership Entities.**

6 As reflected in his Second Interim Report and Petition for Further Instructions
7 (Dkt. No. 103) and Third Interim Report and Petition for Further Instructions (Dkt.
8 No. 123) (collectively, the "Reports"), the Receiver has completed a preliminary
9 accounting of the business and financial activities of the Receivership Entities and
10 their principal, defendant Ralph Iannelli, along with a money-in/money-out
11 ("MIMO") analysis of the net amount(s) invested in or contributed by each known
12 investor in the Entities.

13 As reflected in the Reports, and on the basis of his detailed review of nearly
14 500,000 pages of materials relating to the Entities, the Receiver concluded, among
15 other things, that: (1) defendant Iannelli diverted substantial amounts of Entity
16 money for his own, personal benefit; (2) the Receivership Entities were unprofitable
17 and that their operations were unsustainable absent the infusion of new money from
18 investors and lenders; and (3) the Entities were operating a Ponzi-like investment
19 scheme. (See, e.g., Dkt. Nos. 103 at 14:1-15:27 and 123 at 12:7-23.)

20 In the Ponzi scheme context, the "the general rule is that to the extent
21 innocent investors have received payments in excess of the amount of principal that
22 they originally invested, those payments" are subject to disgorgement to the
23 Receiver as fraudulent transfers, and the Receiver anticipates pursuing such claims.
24 Donell v. Kowell, 533 F.3d 762, 770 (9th Cir. 2008). Of course, where an investor
25 appears to have lost money, on a MIMO basis, as a result of his/her investment in
26 the Entities, the Receiver expects to treat that investor as having a potential claim
27 for repayment against the Entities in the amount of the net loss.

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1 **B. The Receiver Does Not Object, In Principle, To Movant Paul**
2 **Wolansky's Request For Relief, But Believes It Is Premature.**

3 Based on the information presently available to the Receiver, movant Paul
4 Wolansky appears to be just such a net "loser," even when considering the face
5 value of the lien he received against the real property located at 257 Central Park
6 West, Apartment 4C, New York, NY 10024 (the "Co-Op"). While the Receiver has
7 traced Entity funds to the purchase of the Co-Op, the Co-Op does not appear to have
8 any value to the estate of the Receivership Entities in excess of the value of the
9 outstanding lien(s) against the property. Accordingly, the Receiver does not object,
10 in principal, to the relief requested by Mr. Wolansky.

11 The Receiver would emphasize, however, that, through counsel, he has been
12 in contact with Mr. Wolansky in an effort to clarify certain issues arising in
13 connection with his MIMO accounting of Mr. Wolansky's investments, including
14 with respect to any prospective claim that Mr. Wolansky might seek to submit as
15 against the Receivership Entities. As such, and while the Receiver has no specific
16 objection to Mr. Wolansky's pursuing the foreclosure of his lien against the Co-Op,
17 Mr. Wolansky's decision to file the Motion, even while meet and confer discussions
18 between the parties¹ had not concluded, strikes the Receiver as premature.

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¹ The Motion is not accompanied by a clear statement regarding the completion of the meet and confer process, as required by L.R. 7-3. The Receiver does not contest that the movants have engaged in longstanding discussions regarding the issues presented in the Motion and its supporting declarations. What the Motion and the supporting declarations omit, however, is that the movants have consistently provided the Receiver with partial and incomplete responses to his inquiries, incrementally and over an extended period. As such, the Receiver disputes the statement that "[t]he Intervenor's meet and confer efforts were unsuccessful" as reflected in the Declaration of Michael D. Napoli (Dkt. No. 130-1). In the Receiver's view, it would be more accurate to describe the efforts as incomplete.

1 **C. The Lien Upon Which Movant John Perry's Request For Relief Is**
 2 **Predicated Is Subject To Avoidance As A Fraudulent Transfer.**

3 As a preliminary matter, as with Mr. Wolansky, questions remain with respect
 4 to the Receiver's MIMO accounting for Mr. Perry's investments in the Entities.
 5 Depending on how certain payments are ultimately characterized and *not* inclusive
 6 of the value of the lien he received from defendant Iannelli against the real property
 7 located at 266 Penny Lane, Santa Barbara, CA 93108 ("Penny Lane"), Mr. Perry
 8 might be determined to be, alternatively, a net "winner" in the mid six-figures, or a
 9 very small net "loser," in an amount less than \$25,000. Adding the \$3 million value
 10 of the lien Mr. Perry holds against Penny Lane could, in certain circumstances,
 11 result in a determination that he is a substantial net "winner." Again, the Receiver
 12 has, through counsel, requested additional information and clarifications from
 13 Mr. Perry, and on that basis believes the Motion to be premature.

14 More importantly, however, and in any instance, the Receiver objects to
 15 Mr. Perry's request that he be authorized to foreclose upon his lien against Penny
 16 Lane. Put simply, the lien is a fraudulent transfer subject to avoidance by any
 17 creditor of Mr. Iannelli's including the Receivership Entities. As reflected in the
 18 Receiver's Reports, the Entities were used to undertake a Ponzi-like investment
 19 scheme, where the returns on investment paid by Essex were largely funded by
 20 money obtained from new investors, or by new borrowing. (See Dkt. No. 123 at
 21 12:7-23.) Moreover, as reflected in the Motion, the lien Mr. Perry received against
 22 Penny Lane from Mr. Iannelli's family trust (and against Mr. Iannelli's personal
 23 residence) was purportedly given, after "negotiations with Essex and Iannelli" to
 24 "resolve the past due [Essex] notes and to recover the amounts owed" to Mr. Perry.²
 25

26 ² Notably, Mr. Perry's accounting of the debt purportedly owed to him by Essex
 27 includes accrued interest, suggesting he is seeking to recover *more* than any
 28 *actual*, net losses resulting from his investments in the Entities. (See, e.g., Dkt.
 No. 103-3 at ¶¶ 2-5.) Such a result is inconsistent with the equitable nature of
 the above-captioned receivership. See, e.g., SEC v. Topworth Int'l, Ltd., 205
 F.3d 1107, 1116 (9th Cir. 1999); SEC v. Capital Consultants, LLC, 397 F.3d

1 (See Dkt. No. 130-3 at ¶ 5 and Ex. C.) In other words, the lien was given by
2 *Mr. Iannelli* to resolve a purported *Essex* repayment obligation.

3 Under California's Uniform Voidable Transactions Act ("CUVTA"), a
4 transfer is subject to avoidance when made with (1) actual intent to defraud, or
5 (2) constructive fraudulent intent based on the lack of reasonably equivalent value
6 provided in exchange. See Cal. Civ. Code § 3439.04(a); Donell, 533 F.3d at 770-
7 71; In re Cohen, 199 B.R. 709, 715-716 (9th Cir. 1996). Whether reasonably
8 equivalent value was provided is to be determined from the vantage of the
9 transferors' creditors. See Hansen v. Cramer, 39 Cal.2d 321, 324 (1952) ("What
10 constitutes 'a fair equivalent' or 'a fair consideration' under the Fraudulent
11 Conveyance Act must be determined from the stand point of creditors"); Patterson v.
12 Missler, 238 Cal.App.2d 759, 766 (1965) (citing Hansen).

13 Here, the transferor, Mr. Iannelli – who owes the Receivership Entities
14 significant amounts given his apparent diversion of Entity funds for personal
15 purposes – received no reasonably equivalent value in exchange for the lien, given
16 that it was created in order to resolve purportedly outstanding repayment obligations
17 owed by Essex to Mr. Perry. The lien is therefore voidable as a fraudulent transfer
18 under the CUVTA and equity militates against permitting Mr. Perry to profit at the
19 potential expense of all other Receivership Entity investors and legitimate creditors
20 of Mr. Iannelli and the Receivership Entities.

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27 733, 738 (9th Cir. 2005) (describing net claim calculus as "an administratively
28 workable and equitable method of allocating the limited assets of a
receivership"); In re Tedlock Cattle Co., Inc., 552 F.2d 1351, 1354 (9th Cir.
1977).

1 **II. CONCLUSION.**

2 For the foregoing reasons, the Receiver respectfully submits that
3 consideration of the Motion with respect to Mr. Wolansky is premature, and that the
4 Motion should be denied as to the relief requested by Mr. Perry.

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6 Dated: January 2, 2020

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9 By: /s/ Joshua A. del Castillo

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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 **January 2, 2020**, I caused to be served the document entitled: **RESPONSE OF RECEIVER, GEOFF WINKLER, TO INTERVENORS' MOTION TO LIFT THE DECEMBER 21, 2018 STAY ORDER WITH RESPECT TO THE PENNY LANE AND CENTRAL PARK PROPERTIES [DKT NO. 130]** 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 **January 2, 2020** 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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