

1 DAVID R. ZARO (BAR NO. 124334)
 2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)
 3 NORMAN M. ASPIS (BAR NO. 313466)
 4 ALLEN MATKINS LECK GAMBLE
 5 MALLORY & NATSIS LLP
 6 865 South Figueroa Street, Suite 2800
 7 Los Angeles, California 90017-2543
 8 Phone: (213) 622-5555
 9 Fax: (213) 620-8816
 10 E-Mail: dzaro@allenmatkins.com
 11 jdelcastillo@allenmatkins.com
 12 naspis@allenmatkins.com

13 Attorneys for Receiver
 14 GEOFF WINKLER

15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
 18 COMMISSION,

19 Plaintiff,

20 v.

21 RALPH T. IANNELLI and ESSEX
 22 CAPITAL CORP.,

23 Defendants.

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

Ctrm: 6D
 Judge Hon. Fernando M. Olguin

REPLY IN SUPPORT OF
 STIPULATION TO AUTHORIZE
 RECEIVER'S DISGORGEMENT
 EFFORTS AND ESTABLISH
 DISGORGEMENT PROCEDURES

24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 **PLEASE TAKE NOTICE THAT** Geoff Winkler (the "Receiver"), the
 26 Court-appointed permanent receiver for Defendant Essex Capital Corporation
 27 ("Essex") and its subsidiaries and affiliates (collectively, the or "Entities"), hereby
 28 submits the following Reply in Support of Stipulation to Authorize Receiver's
 Disgorgement Efforts and Establish Disgorgement Procedures (the "Stipulation")
 (ECF No. 157, *et seq.*), as follows:

I. INTRODUCTION.

Defendant Ralph Iannelli's Response to the Stipulation (Defendant's
 "Response") (ECF No. 165) should be ignored by this Court. As a preliminary

1 matter, Defendant Iannelli lacks standing to assert anything akin to an affirmative
2 defense on behalf of prospective third-party disgorgement defendants. His effort to
3 do so merely underscores that his Response is nothing more than a baseless, brazen
4 attempt to frustrate the Receiver's efforts to recover funds for the benefit of the
5 Entities and their investors and creditors, in order to benefit a select group of
6 profiting investors whom Mr. Iannelli perceives may be among those against whom
7 the Receiver intends to commence litigation.

8 More critically, Defendant Iannelli's Response is predicated upon a profound
9 mischaracterization of the Stipulation, and the associated Proposed Order thereon.
10 Most critically, the Stipulation does not do what Defendant Iannelli claims: **Neither**
11 **the Stipulation nor its associated Proposed Order request that this Court make**
12 **a finding that Defendant Iannelli operated a Ponzi scheme.** As such, Defendant
13 Iannelli's Response is entirely irrelevant to the relief requested in the Stipulation,
14 which is entirely administrative in nature.

15 The Receiver submits that the Court should not countenance Defendant
16 Iannelli's improper and baseless attempt to interfere with the Receiver's collection
17 efforts, and respectfully requests that the Stipulation, filed in consultation with the
18 Plaintiff Securities and Exchange Commission (the "Commission"), be granted, in
19 its entirety, and the Receiver permitted to commence his disgorgement efforts.

20 **II. ARGUMENT.**

21 **A. As A Threshold Matter, Mr. Iannelli Lacks Standing To Challenge**
22 **The Stipulation.**

23 Defendant Iannelli lacks standing to challenge the Stipulation because he
24 consented to entry of a final judgment (the "Final Judgment") against him in the
25 above-entitled enforcement action, pursuant to which he waived his rights to a jury
26 trial and to appeal the Final Judgment, entered by the Court on June 5, 2019. (See
27 ECF Nos. 90 and 93.) Upon entry of the Final Judgment, Mr. Iannelli's interests in
28 connection with the instant action were terminated, extinguishing his standing to

1 challenge the Stipulation. See e.g., Evanston Ins. Co. v. OEA, Inc., No. S-02-1505
2 DFL PAN, 2004 WL 7334069, at *3 (E.D. Cal. Nov. 22, 2004) (holding that party's
3 "interests continue to be at stake until the possibility of reversal of the Court's
4 summary judgment ruling no longer exists ... Until that possibility no longer exists,
5 that is, until [the party] receives a final judgment, it remains a party to the ...
6 litigation."). Here, the Final Judgment has been entered, extinguishing Mr. Iannelli's
7 standing as a party to challenge the Stipulation.

8 Moreover, even were he to claim an interest as a third party, Defendant
9 Iannelli cannot satisfy fundamental constitutional standing requirements.
10 Specifically, and in connection with the relief requested by the Stipulation,
11 Mr. Iannelli cannot demonstrate that "(1) [he] has suffered an 'injury in fact' that is
12 (a) concrete and particularized and (b) actual or imminent, not conjectural or
13 hypothetical; (2) the injury is fairly traceable to the challenged action of the
14 [Receiver]; and (3) it is likely, as opposed to merely speculative, that the injury will
15 be redressed by a favorable decision." City of Sausalito v. O'Neill, 386 F.3d 1186,
16 1197 (9th Cir. 2004) (internal citation omitted). The Court need not consider the
17 second and third elements to establish Article III standing, because Mr. Iannelli has
18 failed to – and cannot – establish that he will suffer a concrete and particularized
19 actual 'injury in fact' if the Court grants the Stipulation, and enters the corresponding
20 Proposed Order.

21 Defendant Iannelli's Response is therefore procedurally improper and should
22 be disregarded by this Court.

23 **B. Critically, Mr. Iannelli's Response Mischaracterizes The Receiver's**
24 **Presentation To The Court.**

25 Defendant Iannelli's challenge to the Stipulation raised in the Response is
26 predicated upon the false claim that the Receiver is not empowered to determine the
27 existence of a Ponzi scheme and that he has somehow sought to have this Court
28 make a finding that a Ponzi scheme was committed in order to circumvent his

1 burden as a *prospective* litigant to demonstrate fraud in a *hypothetical* fraudulent
2 transfer action. Mr. Iannelli is wrong on both counts.

3 First, this Court specifically authorized the Receiver to, among other things,
4 "conduct such investigation as may be necessary to locate and account for the assets
5 of or managed by the [] Entities" and to "take such action as is necessary and
6 appropriate to preserve and take control of and prevent the dissipation, concealment,
7 or disposition of any such" assets. (See ECF No. 113 at 6:6-12.) That those efforts
8 led the Receiver to conclude that the Entities were used to operate a Ponzi scheme,
9 however inconvenient that conclusion may be for Mr. Iannelli, is simply a fact.
10 Contrary to Mr. Iannelli's assertions, the Receiver's conclusions regarding the
11 operations of the Entities are firmly grounded in available evidence. As set forth in
12 the Receiver's prior submissions to this Court (see, e.g., ECF Nos. 78, 103, 123, and
13 149), the Receiver has reviewed more than 455,000 pages of materials relating to
14 the Entities' business operations and financial activities, reflecting hundreds of
15 thousands of individual transactions. On the basis of his comprehensive review and
16 analysis of these materials, the Receiver concluded that the Entities' activities bear
17 the hallmarks of a Ponzi scheme. The Receiver did not simply conclude that the
18 Entities were "cash poor," as Defendant Iannelli suggests, but that they were
19 unprofitable and unsustainable absent additional cash infusions from new
20 investment or borrowing. The Receiver further confirmed that Essex's payments of
21 so-called returns to old investors were funded in significant part by money obtained
22 from new investors. These operational traits are the quintessential characteristics of
23 a Ponzi investment scheme. See In re United Energy Corp., 944 F.2d 589, 590, fn. 1
24 (9th Cir. 1991) ("A Ponzi scheme is a fraudulent arrangement in which an entity
25 makes payments to investors from monies obtained from later investors rather than
26 from any 'profits' of the underlying business venture.").

27 Second, neither the Stipulation nor its associated Proposed Order request that
28 this Court make a finding that Defendant Iannelli operated a Ponzi scheme. The

1 Stipulation merely reports the Receiver's *conclusions*. (See, e.g., Stipulation at
2 2:23-24 ["The Receiver has concluded and reported to the Court that the activities of
3 the Receivership Entities bear the hallmarks of a Ponzi investment scheme."]) More
4 critically, the Proposed Order on the Stipulation does not invoke these conclusions,
5 or the Ponzi concept, *at all*, and instead is limited to establishing the procedures that
6 would govern the Receiver's disgorgement and associated litigation and settlement
7 efforts.

8 Given that the Proposed Order on the Stipulation, if entered by the Court, is
9 the only document in issue that would have any substantive impact, Defendant
10 Iannelli's challenge to the Stipulation is patently absurd, and can only be viewed as
11 an attempt to run interference for Entity insiders or those profiting investors whom
12 Mr. Iannelli has a personal motivation to protect. The Receiver respectfully submits
13 that this Court should not countenance such an effort, and should therefore reject
14 Defendant Iannelli's Response and enter an order granting the Stipulation.

15 **III. CONCLUSION.**

16 For the foregoing reasons, the Receiver respectfully requests that the Court
17 enter an order granting the Stipulation, in its entirety.

18
19 Dated: April 20, 2020

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

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21
22 By: /s/ Joshua A. del Castillo

JOSHUA A. DEL CASTILLO
Attorneys for Receiver
GEOFF WINKLER

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 **April 20, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **REPLY IN SUPPORT OF STIPULATION TO AUTHORIZE RECEIVER'S DISGORGEMENT EFFORTS AND ESTABLISH DISGORGEMENT PROCEDURES.**

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 **April 20, 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

Mark Riera, Esq.
Jeffer Mangels Butler & Mitchell LLPP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-4308