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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

NOTICE OF MOTION AND MOTION
 OF RECEIVER, GEOFF WINKLER,
 FOR AUTHORITY TO PROSECUTE
 CLAIMS AGAINST SEED MACKALL
 LLP; MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 THEREOF

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

Date: September 17, 2020
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

23 **TO ALL INTERESTED PARTIES:**

24 **PLEASE TAKE NOTICE THAT** on September 17, 2020 at 10:00 a.m., in
 25 Courtroom 6D of the above-entitled Court, located at 350 West First Street, Los
 26 Angeles, California 90012, Geoff Winkler (the "Receiver"), the Court-appointed
 27 permanent receiver for Defendant Essex Capital Corporation ("Essex") and its
 28 subsidiaries and affiliates (collectively, with Essex, the "Receivership Entities"),

1 will and hereby does move for an order authorizing the Receiver to prosecute civil
2 claims against Seed Mackall LLP ("Seed Mackall"), a firm that provided legal
3 services to Essex in the pre-receivership period, in order to prosecute claims for:
4 (1) Aiding and Abetting Breach of Fiduciary Duty; (2) Breach of Fiduciary Duty;
5 and (3) Professional Negligence, which claims are the property of the Receivership
6 Entities pursuant to this Court's September 9, 2019 Order Regarding Permanent
7 Injunction (the "Permanent Injunction") [EFC No. 113].

8 This Motion is based on the authority conferred upon the Receiver by the
9 Permanent Injunction, including the authority to commence litigation, including to
10 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 were completed on July 20, 2020.**

16
17 Dated: August 10, 2020

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

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20 By: /s/ Joshua A. del Castillo

JOSHUA A. DEL CASTILLO
Attorneys for Receiver
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 [ECF No. 66], was vested with, among other things, exclusive authority and control
6 over the Receivership Entities, and was empowered to commence litigation to
7 enforce the rights of the Receivership Entities, and to recover assets of the
8 Receivership Entities. The Court's September 9, 2019 Order Regarding Permanent
9 Injunction (again, the "Permanent Injunction") [ECF No. 113] reaffirmed this
10 authority.

11 As reflected below, on the basis of his investigation and document review, the
12 Receiver has confirmed that, at all times relevant to the draft complaint attached
13 hereto as **Exhibit 1**, Seed Mackall was simultaneously providing legal services to
14 Essex and to Essex's principal, Ralph Iannelli, in his individual capacity, in
15 connection with transactions where Essex and Mr. Iannelli had potential or actual
16 adverse interests, and indeed even in connection with transactions that directly
17 benefitted Mr. Iannelli, individually, while imposing costs and liability on Essex.
18 Despite clear conflicts of interest, Seed Mackall drew no distinction between
19 Mr. Iannelli and Essex, and made no effort to secure a valid, written waiver of the
20 conflict, which resulted in substantial injury to Essex.

21 As presented in substantially more detail below, during the period when both
22 were its clients, Seed Mackall persistently failed to draw any distinction between
23 Mr. Iannelli and Essex, notwithstanding that California law is clear on this subject:
24 a corporation is regarded as a legal entity, separate and apart from its officers and
25 directors, with separate and distinct interests, liabilities, and obligations, and must
26 be treated as such by its legal counsel. Seed Mackall failed to secure a valid, written
27 conflict waiver as required by the California Rules of Professional Conduct (the
28 "CRPC"), but nonetheless provided legal representation to Mr. Iannelli and Essex in

1 connection with the establishment and business of 915 Elm Avenue CVL, LLC
2 ("CVL"), an LLC in which Mr. Iannelli obtained a personal interest, and which
3 subsequently purchased a lumber yard operation and associated real property located
4 at 915 Elm Avenue, Carpinteria, California 93013 (collectively, the "Lumber Yard")
5 from J&G Clay Properties, LLC and its principal, James Gally (collectively,
6 "Mr. Gally"). Mr. Iannelli's interest in CVL and CVL's purchase of the Lumber
7 Yard itself were funded in substantial part by hundreds of thousands of dollars
8 diverted from Essex by Mr. Iannelli and by a note issued to Essex (*not to*
9 Mr. Iannelli or CVL) by Mr. Gally in the amount of \$1.5 million (the "Gally Note").
10 This note was styled as a "seller carryback note," notwithstanding the fact that Essex
11 was not the buyer and received no interest in CVL or the Lumber Yard. Later, when
12 Mr. Iannelli's interest in CVL was at risk, Seed Mackall expressly sought to
13 compromise Essex's right to repayment of a debt owed by CVL in exchange for the
14 preservation of Mr. Iannelli's personal interest. Seed Mackall also issued a demand
15 letter to CVL to collect debts purportedly owed to Mr. Iannelli and Essex by CVL,
16 when in fact Essex alone had funded the loans in issue and was owed repayment. In
17 conflating Mr. Iannelli's and Essex's identities and interests in connection with
18 CVL-related transactions, despite readily apparent conflicts of interest between the
19 two, the Receiver contends that Seed Mackall aided and abetted Mr. Iannelli's
20 breach of fiduciary duty to Essex, breached its own fiduciary duty to Essex, and
21 committed professional negligence. By this Motion, the Receiver seeks authority
22 from the Court to prosecute civil claims against Seed Mackall in a form consistent
23 with the draft Complaint attached hereto as **Exhibit 1**.¹

24

25 ¹ For avoidance of doubt, the Court's Permanent Injunction, at Section VII.I,
26 authorizes the Receiver to "prosecute all claims and causes of action ... that may
27 now or hereafter exist as a result of the activities of present or past employees or
28 agents of the Receivership Entities." While the Receiver has filed the present
Motion out of an abundance of caution, he may elect to file a complaint similar
or identical to that attached hereto as **Exhibit 1** prior to the hearing on this
Motion should he determine that it is prudent to do so, including but not limited
to preserve all claims alleged therein.

1 **II. STATEMENT OF RELEVANT FACTS.**

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

7 As previously described in prior submissions to this Court, in the pre-
8 receivership period, Essex's principal Mr. Iannelli diverted funds from Essex, and
9 caused Essex to incur substantial repayment obligations, in connection with the
10 establishment of CVL, and CVL's subsequent purchase of the Lumber Yard from
11 Mr. Gally. (See, e.g., ECF Nos. 115-1 at 8:18-20; 115-3 at ¶ 10; 125 at 4:16-28;
12 125-1 at ¶¶ 2-8.) The Receiver previously confirmed that Mr. Iannelli diverted
13 hundreds of thousands of dollars from Essex in connection with his interest in CVL
14 and its purchase of the Lumber Yard, and caused Essex to incur at least \$1,500,000,
15 plus interest, in debt by virtue of the Gally Note, which was styled as a seller
16 carryback loan, to fund a substantial part of the purchase, more than \$450,000 of
17 which had already been repaid by Essex to Mr. Gally at the time of the Receiver's
18 appointment. (Declaration of Geoff Winkler ["Winkler Decl."] ¶ 3.)

19 In all, CVL's purchase of the Lumber Yard was effectuated by more than
20 \$2 million in Essex cash and financing obligations. (Id.) As of the date of this
21 Motion, CVL has not repaid Essex any of the money it promised to repay as
22 reimbursement for Essex's obligation on the Gally Note, and Essex remains
23 obligated to Mr. Gally in the amount of over \$1 million, to say nothing of its
24 repayment obligation to investors whose funds were misappropriated to enable
25 CVL's purchase of the Lumber Yard. (Id. at ¶ 4.) In other words, Essex has been
26 substantially harmed, and its effective insolvency deepened considerably, as a result
27 of CVL's purchase of the Lumber Yard.

28

1 Seed Mackall served as legal counsel to Mr. Iannelli and Essex at all times
2 relevant to the creation of CVL, its purchase of the Lumber Yard, and thereafter in
3 connection with a number of issues arising from and in connection with its purchase
4 of the Lumber Yard. (Id. at ¶ 5.) Among other things, the documents obtained and
5 reviewed by the Receiver suggest that Seed Mackall represented: (1) Mr. Iannelli in
6 connection with the drafting of CVL's Operating Agreement, which representation
7 inured to Mr. Iannelli's personal and unilateral benefit; (2) Mr. Iannelli in
8 connection with a dispute with Mr. Reyner and CVL relating to his percentage
9 interest in CVL, during which Seed Mackall brazenly offered to subvert Essex's
10 interests in order to protect Mr. Iannelli's; and (3) Mr. Iannelli and Essex in
11 connection with their efforts to collect on loans made to CVL, despite the fact that
12 all such loans were funded entirely by Essex. (Id.)

13 Yet Seed Mackall appears never to have drawn the requisite legal and ethical
14 distinction between Mr. Iannelli and Essex – a distinction that would have, among
15 other things, required Seed Mackall to: (A) obtain a written conflict waiver – to the
16 extent any conflicts could even be waived – from both Mr. Iannelli and Essex,
17 which it never did; and (B) investigate the nature and extent of any such conflicts,
18 which would inevitably have resulted in Seed Mackall's discovery of Mr. Iannelli's
19 misappropriation and misuse of Essex funds in connection with the facts
20 surrounding the funding underlying CVL's purchase of the Lumber Yard.

21 **III. ARGUMENT.**

22 **A. This Court Should Exercise Its Discretion To Authorize The** 23 **Receiver To Commence Litigation Against Seed Mackall.**

24 As a preliminary matter, the Permanent Injunction already generally
25 authorizes the Receiver to "institute, pursue, and prosecute all claims and causes of
26 action ... that may now or hereafter exist as a result of the activities of present or
27 past employees or agents of the Receivership Entities" and "to institute ... such
28 actions or proceedings ... which (i) the Receiver deems necessary and advisable to

1 preserve or recover any [receivership] Assets, or (ii) the Receiver deems necessary
2 and advisable to carry out the Receiver's mandate." (See ECF No. 113 at 6:26-7:7.)

3 This grant of general litigation authority derives from the broad equitable
4 powers of the Court in the receivership context. "The power of a district court to
5 impose a receivership or grant other forms of ancillary relief does not in the first
6 instance depend on a statutory grant of power from the securities laws. Rather, the
7 authority derives from the inherent power of a court of equity to fashion effective
8 relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary
9 purpose of equity receiverships is to promote orderly and efficient administration of
10 the estate by the district court for the benefit of creditors." SEC v. Hardy, 803 F.2d
11 1034, 1038 (9th Cir. 1986).

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

16 A district court's power to supervise an equity receivership
17 and to determine the appropriate action to be taken in the
18 administration of the receivership is extremely broad. The
19 district court has broad powers and wide discretion to
20 determine the appropriate relief in an equity receivership.
21 The basis for this broad deference to the district court's
22 supervisory role in equity receiverships arises out of the
23 fact that most receiverships involve multiple parties and
24 complex transactions. A district court's decision
25 concerning the supervision of an equitable receivership is
26 reviewed for abuse of discretion.

27 Id. (citations omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107,
28 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
29 role, and 'we generally uphold reasonable procedures instituted by the district court
30 that serve th[e] purpose' of orderly and efficient administration of the receivership
31 for the benefit of creditors."). Accordingly, the Court has broad equitable powers
32 and discretion in the context of the administration of the instant receivership,

1 including broad power to authorize the Receiver to undertake litigation, when
2 necessary and appropriate, to recover assets of the Receivership Entities.

3 **B. The Receiver's Claims Against Seed Mackall Are Appropriate.**

4 As a matter of law, a corporation is a distinct legal entity from its officers and
5 directors. N. Valley Mall, LLC v. Longs Drug Stores Cal., LLC, 27 Cal. App. 5th
6 598, 602 (2018) ("Corporations have an identity apart from their owners") (internal
7 quotations and citations omitted); Turman v. Super. Ct., 17 Cal. App. 5th 969, 980
8 (2017) ("[A] corporation is regarded as a legal entity, separate and distinct from its
9 stockholders, officers and directors, with separate and distinct liabilities and
10 obligations") (internal citations and quotations omitted); Clean Air Transp. Sys. v.
11 San Mateo County Transit Dist., 198 Cal. App. 3d 576, 578 (1988) ("The rights and
12 liabilities of corporations are distinct from the persons composing it.").

13 It is for this reason that, while a lawyer may concurrently represent multiple
14 clients, including a constituent member of a corporation and the corporation itself,
15 such representation is subject to the strictures of the CRPC, including those
16 applicable to conflicts of interest which provide, in pertinent part, that a conflict of
17 interest may arise from representing concurrent clients when the lawyer, "without
18 informed written consent[] from each client and compliance with paragraph (d) [of
19 CRPC, Rule 1.7]," engages in representation of one client that "is directly adverse to
20 another client in the same or a separate matter." See CRPC, Rule 1.7(a). Moreover,
21 CRPC, Rule 1.13 provides, among other things that "[i]f a lawyer representing an
22 organization knows that a constituent is acting [or] intends to act ... in a manner that
23 the lawyer knows or reasonably should know[] is (i) a violation of a legal obligation,
24 and (ii) likely to result in substantial[] injury to the organization, the lawyer shall
25 proceed as is reasonably[] necessary in the best lawful interest of the organization."

26 As noted above, the records obtained by the Receiver have led him to the
27 inescapable conclusions that: (1) Seed Mackall persistently failed or refused to
28 recognize Mr. Iannelli and Essex as separate clients, despite having an ethical and

1 legal obligation to do so; and that (2) as a consequence, Seed Mackall provided legal
2 assistance to Mr. Iannelli in connection with CVL, its purchase of the Lumber Yard,
3 and issues and disputes arising therefrom that resulted in direct and significant
4 injury to Essex, as alleged in the draft complaint attached hereto as **Exhibit 1**.

5 The Receiver therefore respectfully submits that it is appropriate to
6 commence an action against Seed Mackall, in a manner consistent with the draft
7 Complaint attached hereto as **Exhibit 1**, in order to prosecute claims for (1) Aiding
8 and Abetting Breach of Fiduciary Duty; (2) Breach of Fiduciary Duty; and
9 (3) Professional Negligence.

10 **C. The Receiver Will Endeavor To Minimize Litigation Fees And**
11 **Expenses In Connection With This Proposed Litigation.**

12 The Receiver has consulted with his counsel, Allen Matkins Leck Gamble
13 Mallory & Natsis LLP ("Allen Matkins"), and believes the legal fees and expenses
14 for the contemplated action could be as low as \$50,000, in the event of a prompt
15 settlement, but may reach or exceed \$250,000, in the event of a full trial. (Winkler
16 Decl. ¶ 6.) Based on the information presently available to him, the Receiver
17 anticipates that this matter should be resolved via settlement, or at summary
18 judgment, with legal fees and expenses under \$150,000. (Id.) As with all matters,
19 the Receiver and Allen Matkins will make every effort to minimize administrative
20 expenses associated with the proposed action. (Id.)

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

25 After reviewing the available evidence, weighing the merits of the proposed
26 claims against Seed Mackall, and assessing the anticipated costs of litigation and
27 likelihood of success and collectability, the Receiver believes, in his reasonable
28 business judgment, that it is in the best interest of the receivership estate to pursue

1 such claims, and respectfully requests the Court issue an order authorizing him to do
2 so. (Id. at ¶ 7.)

3 **IV. CONCLUSION.**

4 Based on the foregoing, the Receiver respectfully requests that this Court
5 grant the instant Motion, and enter an order authorizing the Receiver to commence
6 litigation against Seed Mackall, in a form consistent with the draft Complaint
7 appended hereto as **Exhibit 1.**

8
9 Dated: August 10, 2020

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

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12 By: /s/ Joshua A. del Castillo

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13 Attorneys for Plaintiff
14 GEOFF WINKLER, RECEIVER

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 GEOFF WINKLER, RECEIVER,
18 Plaintiff,

19 v.

20 SEED MACKALL LLP, a California
21 limited liability partnership; and DOES
22 1-30, inclusive,
23 Defendants.

Case No.

COMPLAINT FOR:

- (1) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY;
- (2) BREACH OF FIDUCIARY DUTY;
- (3) PROFESSIONAL NEGLIGENCE

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

JURISDICTION AND VENUE

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

1 Commission (the "Commission") enforcement action, styled *SEC v. Ralph Iannelli*
2 *and Essex Capital Corp.*, USDC, C.D. Cal. Case No. 2:18-cv-05008-FMO-AFM
3 (the "Enforcement Action").

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

6 3. Venue in the Central District of California is proper under 28 U.S.C.
7 Section 1391 because this action is an ancillary proceeding to the Enforcement
8 Action and because the Receiver was appointed in this District pursuant to the
9 Court's previously entered Order Regarding Preliminary Injunction and
10 Appointment of a Permanent Receiver (the "Appointment Order") (ECF No. 66) in
11 the Enforcement Action, which specifically authorized the Receiver: (a) "to
12 institute, pursue, and prosecute all claims and causes of action of whatever kind and
13 nature that may now or hereafter exist as a result of the activities of" the
14 Receivership Entities; and (b) "to institute . . . or become party to such actions or
15 proceedings in state, federal, or foreign courts, which . . . the Receiver deems
16 necessary and advisable to preserve or recover any Assets." This Court's September
17 9, 2019 Order Regarding Permanent Injunction (the "Permanent Injunction") (ECF
18 No. 113) in the Enforcement Action reaffirmed the Receiver's authority.

19 **PARTIES**

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

1 investor-funded promissory notes and investor-funded LLC's, not income or revenue
2 derived from its equipment leasing business.

3 10. As alleged by the Commission in the SEC Complaint, Essex was
4 unable to cover the principal and interest obligations that it owed to its investors and
5 creditors using lease revenue alone. As alleged by the Commission, payments on
6 existing obligations were instead made in large part from new money, in a manner
7 consistent with a Ponzi investment scheme.

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

13 **II. The Establishment of CVL.**

14 12. On information and belief, Mr. Iannelli and William S. Reyner, Jr.
15 established 915 Elm Avenue CVL, LLC ("CVL") in or around November 2015, in
16 order to purchase a lumber yard business operation and associated real property
17 located at 915 Elm Avenue, Carpinteria, California 93013 (collectively, the
18 "Lumber Yard") from J&G Clay Properties, LLC and its principal, James Gally
19 (collectively, "Mr. Gally").

20 13. CVL's purchase of the Lumber Yard was financed, in significant part,
21 via a loan in the principal amount of \$1,500,000 from Mr. Gally to Essex, which
22 was styled as a seller carryback note (the "Gally Note") and issued on or around
23 January 14, 2016.

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

1 15. CVL executed a companion note to the Gally Note (the "CVL Note"),
2 on or around January 14, 2016, pursuant to which CVL agreed to pay Essex
3 \$1,500,000 on January 14, 2019, the maturity date of the Gally Note.

4 16. On information and belief, the CVL Note was intended to reimburse
5 Essex for its extension of credit and obligation to repay the Gally Note.

6 17. On information and belief, Mr. Iannelli also caused Essex to loan CVL
7 an additional \$125,000, as memorialized by that certain promissory note, dated
8 October 14, 2016, by and between CVL and Essex (the "Essex-CVL Note"), in
9 connection with the administration and acquisition of materials for the Lumber
10 Yard.

11 18. On information and belief, the funds for the Essex-CVL Note were
12 transferred from an account held by Essex at Montecito Bank & Trust ("MBT") to
13 Mr. Iannelli's personal account at MBT on or around October 13, 2016.

14 19. On information and belief, the \$125,000 referenced in Paragraphs 17
15 and 18, above, was transferred from Mr. Iannelli's MBT account to CVL on October
16 13, 2016.

17 20. In addition to the payments required on the Gally Note and the loan
18 memorialized by the Essex-CVL Note, as detailed below, and on the basis of his
19 review and analysis of the business and financial records of the Receivership
20 Entities, the Receiver has concluded that at least \$518,460 in Essex funds were
21 diverted to CVL in connection with CVL's purchase and administration of the
22 Lumber Yard, via transfers from Essex to Mr. Iannelli, and thereafter, to CVL.

23 21. Specifically, on or around January 11, 2016, \$500,000 was transferred
24 from an account held by Essex at First Republic Bank to an account held by
25 Mr. Iannelli at MBT.

26 22. On information and belief, on or around January 13, 2016, \$393,460 of
27 the \$500,000 referenced in Paragraph 21, above, was transferred from Mr. Iannelli's
28 MBT account to CVL.

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

3 24. On information and belief, on or around July 12, 2016, the \$125,000
4 referenced in Paragraph 23, above, was transferred from Mr. Iannelli's MBT
5 account to CVL, as a purported personal loan to CVL from Mr. Iannelli.

6 25. On information and belief, the transfers set forth in Paragraphs 23 and
7 24, above, served as the basis for a purported personal loan of \$125,000 from
8 Mr. Iannelli to CVL, memorialized by a July 11, 2016 promissory note (the "Iannelli
9 Note") and due on July 11, 2018.

10 26. On information and belief, the funds that served as the basis for CVL's
11 obligation to repay Mr. Iannelli, as reflected in the Iannelli Note, were actually
12 diverted from Essex.

13 27. On information and belief, Mr. Iannelli has received interest payments
14 in connection with the Iannelli Note. On information and belief, these interest
15 payments have never been paid to Essex, nor have any of the amounts identified
16 above been repaid to Essex by Mr. Iannelli or CVL, notwithstanding the fact that
17 Essex funds were used to make the loan to CVL memorialized by the Iannelli Note.

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

21 29. On information and belief, the current members of CVL are: (1) The
22 William S. Reyner, Jr. Trust [29.64% membership interest]; (2) Reyner Family
23 Partners, L.P. [29.64% membership interest]; (3) William S. Reyner III [1%
24 membership interest]; (4) Ralph Iannelli [39.04% membership interest]; and
25 (5) Ralph T. Iannelli, III [0.68% membership interest] (collectively, the
26 "Members").

27 30. Despite the use of Essex funds and the incurrence of substantial Essex
28 obligations in connection with CVL's purchase and administration of the Lumber

1 Yard, Essex received no memorialized legal, financial, or other interest in CVL or
2 the Lumber Yard.

3 **III. Seed Mackall's Simultaneous Representation of Mr. Iannelli and Essex in**
4 **Connection with CVL.**

5 31. On information and belief, Seed Mackall simultaneously represented
6 both Mr. Iannelli, in his personal capacity with respect to, at least, his membership
7 interest in CVL and as a creditor of CVL, and Essex, with respect to its agreements
8 with CVL and as a creditor of CVL, throughout the time period described above.

9 32. Specifically, as set forth in Section 11.1 of CVL's Operating Agreement
10 (the "Agreement"), dated November 23, 2015, Seed Mackall represented
11 Mr. Iannelli in connection with the Agreement, which governed, among other
12 things, the formation of CVL, the Members' initial capital contributions, their
13 corresponding membership interests, and issues related to the Members' capital
14 accounts.

15 33. Pursuant to the capital contribution requirements set forth in Exhibit A
16 to the Agreement, and in connection with CVL's purchase and administration of the
17 Lumber Yard, Mr. Iannelli, while being represented by Seed Mackall in connection
18 with CVL's formation and the Agreement, diverted funds from Essex and caused
19 Essex to incur significant obligations to Mr. Gally and CVL, by virtue of the Gally
20 Note, the CVL Note, and the Essex-CVL Note.

21 34. On information and belief, and in addition to representing Essex in
22 connection with certain equipment leases and related loan transactions, Seed
23 Mackall represented Essex as a creditor of CVL in connection with its loans to CVL
24 including, among other things, by preparing and transmitting an August 10, 2018
25 demand letter to CVL's principal, Mr. Reyner, on behalf of Essex in connection with
26 CVL's default on its loan payment obligations to Essex arising from and in
27 connection with the purchase of the Lumber Yard.

28

1 35. On information and belief, Seed Mackall did not distinguish at any time
2 between the interests of Mr. Iannelli and those of Essex; consistently allowed
3 Mr. Iannelli to make decisions and representations for Essex, without any
4 consideration for his potential or actual conflicts of interest with Essex with respect
5 to CVL's purchase of the Lumber Yard, the money and loans used to facilitate the
6 purchase, and the issues arising therefrom; and failed to obtain a written, informed
7 waiver of any such conflicts, to the extent they were waivable under the California
8 Rules of Professional Conduct (the "CRPC"). Seed Mackall was therefore reckless
9 in not investigating any facts that might or did result in a conflict of interest between
10 Mr. Iannelli and Essex, compounding the harms to Essex detailed herein.

11 36. On information and belief, Mr. Iannelli's personal membership interest
12 in CVL was threatened with dilution via a capital call in or around July 2018 (the
13 "Capital Call"), which Capital Call Mr. Iannelli could not or would not satisfy.

14 37. On information and belief, and in order to prevent the dilution of
15 Mr. Iannelli's personal membership interest in the face of the Capital Call, Seed
16 Mackall informed Mr. Reyner, by way of a letter dated July 31, 2018, that "Ralph
17 and Essex demand that Ralph's share of the capital call be offset against [the
18 Iannelli] Note and, if and to the extent necessary, against the Essex Note."

19 38. Seed Mackall's demand, as set forth in Paragraph 37, above,
20 contemplated compromising Essex's rights and claims in connection with the CVL
21 Note and/or the Essex-CVL Note in order to preserve Mr. Iannelli's personal
22 membership interest in CVL, and with no concomitant benefit to Essex.

23 39. On information and belief, Seed Mackall's demand, set forth in
24 Paragraph 37, above, contemplated a windfall for Mr. Iannelli, to the direct and
25 exclusive detriment of Essex, because even the Iannelli Note was funded by Essex,
26 not Mr. Iannelli.

27 40. On information and belief, Seed Mackall failed to obtain Mr. Iannelli's
28 and Essex's informed written consent prior to issuing the demand set forth in

1 Paragraph 37, above, pursuant to which Essex's and Mr. Iannelli's interests were
2 directly adverse to one another, in violation of the CRPC.

3 41. On information and belief, Seed Mackall, a law firm that advertises
4 itself as being comprised of "lawyers and . . . practices [that] reflect sophisticated
5 legal skills on par with much larger national firms," (see
6 <https://www.seedmackall.com/>) knew, or reasonably should have known, that the
7 demand set forth in Paragraph 37, above, would, if accepted, result in substantial
8 injury to Essex, yet failed to act as reasonably necessary in the best lawful interest of
9 Essex.

10 42. On information and belief, Seed Mackall also represented Mr. Iannelli,
11 as a purported creditor of CVL, in connection with his efforts to collect on the
12 Iannelli Note, the repayment obligation for which was based upon Mr. Iannelli's
13 purportedly personal loan to CVL.

14 43. As set forth in Paragraphs 26 and 27, above, and on information and
15 belief, the repayment obligation underlying the Iannelli Note actually arose due to
16 funds that were diverted from Essex by Mr. Iannelli to CVL, not funds loaned by
17 Mr. Iannelli, in his personal capacity, to CVL.

18 44. Specifically, and on information and belief, the Iannelli Note was
19 entirely funded by Essex via Mr. Iannelli's unlawful diversion of Essex funds for his
20 unilateral and personal benefit, and those funds are the property of Essex's and the
21 Entities' receivership estate.

22 45. On information and belief, Essex, not Mr. Iannelli, has a right to the
23 return of the funds underlying the Iannelli Note.

24 46. On information and belief, Seed Mackall facilitated Mr. Iannelli's
25 collection efforts relating to the Iannelli Note, for repayment to himself, in his
26 personal capacity, and to the direct and exclusive detriment of Essex, because,
27 among other things, the Iannelli Note was funded by Essex.

28

1 47. On information and belief, Seed Mackall's facilitation of Mr. Iannelli's
2 collection efforts on the Iannelli Note was directly adverse to Essex's interests
3 because it perpetuated Mr. Iannelli's improper diversion of funds.

4 48. On information and belief, Seed Mackall failed to obtain Mr. Iannelli's
5 and Essex's informed written consent prior to representing both Mr. Iannelli and
6 Essex simultaneously as creditors of CVL in connection with their respective loans
7 to CVL, in violation of the CRPC.

8 49. On information and belief, Seed Mackall also represented CVL in
9 connection with CVL's formation, and various establishment and acquisition issues
10 with respect to CVL, despite the representations set forth in Section 11.1 of the
11 Agreement to the contrary.

12 50. On information and belief, Seed Mackall represented CVL in
13 connection with the filing of its Articles of Organization (Form LLC-1) with the
14 California Secretary of State, applying for the entity's employer identification
15 number, issued by the Internal Revenue Service, providing advice to Mr. Reyner in
16 connection with MBT's loans to CVL, and addressing certain asset acquisition
17 issues.

18 51. Accordingly, and on information and belief, CVL, not Mr. Iannelli,
19 paid Seed Mackall's legal fees associated with CVL's formation, even though
20 Section 11.1 of the Agreement states, in pertinent part, that "Seed Mackall . . . has
21 represented only Ralph T. Iannelli in connection with this Agreement."

22 52. On information and belief, Seed Mackall failed to obtain Mr. Iannelli's,
23 Essex's, and CVL's informed written consent prior to representing Mr. Iannelli,
24 Essex, and CVL with respect to the numerous and divergent issues and interests in
25 connection with the Agreement and CVL, in violation of the CRPC.

26 53. The Receiver did not learn of, and could not have learned of, the nature
27 and scope of Seed Mackall's actions as alleged herein, including but not limited to
28 its simultaneous representation of Mr. Iannelli and Essex in connection with the

1 CVL transaction, prior to September 24, 2019. On September 24, 2019, Seed
2 Mackall made a second production of documents to the Receiver, including a
3 production of documents relating to and further illuminating its role in the CVL
4 transaction.

5 **COUNT I – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

6 **(Against All Defendants)**

7 54. The Receiver incorporates herein each and every allegation contained
8 in Paragraphs 1 through 53, inclusive, set forth above.

9 55. At all relevant times, Mr. Iannelli was the sole shareholder, founder,
10 president, and chief executive officer of Essex. As such, Mr. Iannelli owed a
11 fiduciary duty of care to act in the best interest of Essex and a fiduciary duty of
12 loyalty to act in good faith toward Essex, and to refrain from putting his personal
13 interests ahead of the interests of Essex.

14 56. As alleged by the Commission, and as set forth in Paragraphs 7 through
15 11, above, Mr. Iannelli caused Essex to perpetrate multi-million dollar securities
16 fraud, pursuant to which Mr. Iannelli made materially false and misleading
17 representations to Essex's investors.

18 57. As alleged by the Commission, Mr. Iannelli and Essex, through
19 Mr. Iannelli, violated the antifraud provisions of Sections 17(a) of the Securities Act
20 of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5
21 thereunder.

22 58. On information and belief, Essex's investors reasonably relied upon on
23 Mr. Iannelli's misrepresentations, as intended by Mr. Iannelli, and the investors'
24 reliance on Mr. Iannelli's misrepresentations was a substantial factor in proximately
25 causing damage to the Receivership Entities and their investors.

26 59. Mr. Iannelli breached his fiduciary duties to the Receivership Entities
27 by engaging in the actions described above.

28

1 60. Specifically, Mr. Iannelli breached his duties of care and loyalty to
2 Essex by, among other things, diverting Essex funds and causing Essex to incur
3 obligations, in an aggregate amount exceeding \$2,100,000, for CVL's purchase and
4 administration of the Lumber Yard.

5 61. Despite the use of Essex funds and the incurrence of substantial Essex
6 obligations in connection with CVL's purchase and administration of the Lumber
7 Yard, Essex received no memorialized legal, financial, or other interest in CVL or
8 the Lumber Yard.

9 62. Accordingly, and on information and belief, the diversion of Essex
10 funds and incurrence of Essex obligations in connection with CVL and the Lumber
11 Yard directly benefited Mr. Iannelli, to the direct and exclusive detriment of Essex.

12 63. On information and belief, after Mr. Iannelli caused Essex to incur
13 obligations in connection with CVL and the Lumber Yard, Defendants, including
14 Seed Mackall, on behalf of Mr. Iannelli, and while representing Essex as a creditor
15 of CVL, offered to compromise Essex's rights and claims in connection with the
16 CVL Note and/or the Essex-CVL Note in order to preserve Mr. Iannelli's personal
17 membership interest in CVL.

18 64. Accordingly, and on information and belief, Defendants, including
19 Seed Mackall, had actual knowledge of Mr. Iannelli's fiduciary duties described
20 above, and had actual knowledge that Mr. Iannelli was breaching those fiduciary
21 duties as a result of the conduct described above. As set forth herein, Defendants,
22 including Seed Mackall, also had their own fiduciary duties to Essex, which they
23 breached.

24 65. Defendants, including Seed Mackall, aided and abetted, and provided
25 substantial assistance, to Mr. Iannelli in breaching his fiduciary duties to Essex by,
26 among other things: (a) offering to compromise Essex's interests as a creditor of
27 CVL, while representing Essex as a creditor of CVL, in order to prevent the dilution
28 of Mr. Iannelli's personal membership interest in the face of the Capital Call; (b)

1 facilitating Mr. Iannelli's collection efforts on the Iannelli Note, in his personal
2 capacity, even though the Iannelli Note was funded via Mr. Iannelli's unlawful
3 diversion of Essex funds and, therefore, Essex, not Mr. Iannelli, has a right to the
4 return of the funds underlying the Iannelli Note; and (c) representing Mr. Iannelli in
5 connection with CVL's formation and the Agreement and subsequent related
6 activities, pursuant to which Mr. Iannelli diverted funds from Essex and caused
7 Essex to incur and carry significant obligations to Mr. Gally and CVL, by virtue of
8 the Gally Note, the CVL Note, and the Essex-CVL Note.

9 66. As a direct, substantial, and proximate result of Defendants', including
10 Seed Mackall's, aiding and abetting, and substantially assisting Mr. Iannelli's
11 breaches of fiduciary duty, Essex suffered financial losses and consequential
12 damages including, but not limited to, exposure to liability to its investors and
13 creditors, and a deepened state of insolvency with no concomitant legal, financial, or
14 other interest in CVL, in an amount to be proven at trial, but not less than
15 \$972,143.56.

16 **COUNT II – BREACH OF FIDUCIARY DUTY**

17 **(Against All Defendants)**

18 67. The Receiver incorporates herein each and every allegation contained
19 in Paragraphs 1 through 66, inclusive, set forth above.

20 68. Defendants, including Seed Mackall, acted as the attorneys for Essex,
21 as set forth herein, and provided legal counsel to Essex relating to a number of
22 matters through 2018 including, among other things, in connection with Essex's
23 loans to CVL.

24 69. As Essex's attorneys, Defendants, including Seed Mackall, owed Essex
25 separate fiduciary duties including, but not limited to, the duty of loyalty, the duty to
26 defend, protect, and preserve a client's interests, and the duty to exercise such skill,
27 prudence, and diligence as attorneys of ordinary skill and capacity commonly
28 possess and exercise in the performance of tasks they undertake.

1 70. On information and belief, Defendants, including Seed Mackall,
2 breached their fiduciary duties to Essex by, among other things: (a) offering to
3 compromise Essex's interests as a creditor of CVL, while representing Essex as a
4 creditor of CVL, in order to prevent the dilution of Mr. Iannelli's personal
5 membership interest in the face of the Capital Call; (b) facilitating Mr. Iannelli's
6 collection efforts on the Iannelli Note, in his personal capacity, even though the
7 Iannelli Note was funded via Mr. Iannelli's unlawful diversion of Essex funds and,
8 therefore, Essex, not Mr. Iannelli, has a right to the return of the funds underlying
9 the Iannelli Note; (c) representing Mr. Iannelli in connection with CVL's formation
10 and the Agreement, pursuant to which Mr. Iannelli diverted funds from Essex and
11 caused Essex to incur significant repayment obligations to Mr. Gally and CVL, by
12 virtue of the Gally Note, the CVL Note, and the Essex-CVL Note; and (d) failing to
13 exercise reasonable skill, prudence, and diligence as attorneys of ordinary skill and
14 capacity normally possess.

15 71. On information and belief, Defendants, including Seed Mackall, failed
16 to obtain the informed written consent of Mr. Iannelli and Essex prior to, among
17 other things: (a) offering to compromise Essex's interests as a creditor of CVL,
18 while representing Essex as a creditor of CVL, in order to prevent the dilution of
19 Mr. Iannelli's personal membership interest in the face of the Capital Call; (b)
20 facilitating Mr. Iannelli's collection efforts on the Iannelli Note, in his personal
21 capacity, even though the Iannelli Note was funded via Mr. Iannelli's unlawful
22 diversion of Essex funds and, therefore, Essex, not Mr. Iannelli, has a right to the
23 return of the funds underlying the Iannelli Note; and (c) representing Mr. Iannelli in
24 connection with CVL's formation and the Agreement, pursuant to which Mr.
25 Iannelli diverted funds from Essex and caused Essex to incur significant repayment
26 obligations to Mr. Gally and CVL, by virtue of the Gally Note, the CVL Note, and
27 the Essex-CVL Note.

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1 72. The CRPC required the Defendants, under the circumstances, to obtain
2 Mr. Iannelli's and Essex's informed written consent prior to representing both in a
3 capacity where their interests were directly adverse to one another.

4 73. Defendants' breaches of fiduciary duty were and are causes in fact and
5 substantial causes of Essex's financial harm, exposure to liability to its investors and
6 creditors, and deepened state of insolvency in connection with its repayment
7 obligations to Mr. Gally and loans to CVL, without any concomitant legal, financial,
8 or other interest in the latter.

9 74. But for Defendants', including Seed Mackall's, actions described herein
10 including, but not limited to their: (a) offering to compromise Essex's interests as a
11 creditor of CVL, while representing Essex as a creditor of CVL, in order to prevent
12 the dilution of Mr. Iannelli's personal membership interest in the face of the Capital
13 Call; (b) facilitating Mr. Iannelli's collection efforts on the Iannelli Note, in his
14 personal capacity, even though the Iannelli Note was funded via Mr. Iannelli's
15 unlawful diversion of Essex funds and, therefore, Essex, not Mr. Iannelli, has a right
16 to the return of those funds underlying the Iannelli Note; (c) representing
17 Mr. Iannelli in connection with CVL's formation and the Agreement, pursuant to
18 which Mr. Iannelli diverted funds from Essex and caused Essex to incur significant
19 repayment obligations to Mr. Gally and CVL, by virtue of the Gally Note, the CVL
20 Note, and the Essex-CVL Note; and (d) failing to exercise reasonable skill,
21 prudence, and diligence as attorneys of ordinary skill and capacity normally possess,
22 the Receivership Entities would have avoided certain exposure to liability to their
23 investors and creditors in connection with Essex's loans to CVL, a deepened state of
24 insolvency, and other financial harm.

25 75. As a direct and proximate result of Defendants', including Seed
26 Mackall's, breaches of fiduciary duty, the Receivership Entities suffered financial
27 losses and consequential damages including, but not limited to, exposure to liability
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1 to their investors and creditors, and a deepened state of insolvency, in an amount to
2 be proven at trial, but not less than \$972,143.56.

3 **COUNT III – PROFESSIONAL NEGLIGENCE**

4 **(Against All Defendants)**

5 76. The Receiver incorporates herein each and every allegation contained
6 in Paragraphs 1 through 75, inclusive, set forth above.

7 77. An attorney-client relationship existed between Defendants, including
8 Seed Mackall, and Essex.

9 78. As Essex's attorneys, Defendants, including Seed Mackall, owed Essex
10 a duty to use the skill and care that a reasonably careful attorney would have used in
11 similar circumstances.

12 79. Defendants, including Seed Mackall, failed to exercise reasonable care
13 and skill, and negligently performed their professional duties to Essex by, among
14 other things: (a) offering to compromise Essex's interests as a creditor of CVL,
15 while representing Essex as a creditor of CVL, in order to prevent the dilution of
16 Mr. Iannelli's personal membership interest in the face of the Capital Call;
17 (b) facilitating Mr. Iannelli's collection efforts on the Iannelli Note, in his personal
18 capacity, even though the Iannelli Note was funded via Mr. Iannelli's unlawful
19 diversion of Essex funds and, therefore, Essex, not Mr. Iannelli, has a right to the
20 return of the funds underlying the Iannelli Note; and (c) representing Mr. Iannelli in
21 connection with CVL's formation and the Agreement, pursuant to which
22 Mr. Iannelli diverted funds from Essex and caused Essex to incur significant
23 repayment obligations to Mr. Gally and CVL, by virtue of the Gally Note, the CVL
24 Note, and the Essex-CVL Note.

25 80. Defendants, including Seed Mackall, failed to exercise reasonable care
26 and skill, and negligently performed their professional duties to Essex, while failing
27 to obtain the requisite informed written consent of Mr. Iannelli and Essex prior to
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1 simultaneously representing both of their directly adverse interests in connection
2 with CVL.

3 81. Defendants', including Seed Mackall's, actions constitute negligence as
4 they demonstrated a lack of care and an extreme departure from what a reasonably
5 careful attorney would have done under the same situation to prevent harm to Essex.

6 82. Defendants', including Seed Mackall's, negligent actions and failures to
7 act were and are causes in fact and substantial causes of the Receivership Entities'
8 financial harm and consequential damages including, but not limited to, Essex's
9 exposure to liability to its investors and creditors, and its deepened state of
10 insolvency.

11 83. But for Defendants', including Seed Mackall's, actions described herein
12 including, but not limited to their: (a) offering to compromise Essex's interests as a
13 creditor of CVL, while representing Essex as a creditor of CVL, in order to prevent
14 the dilution of Mr. Iannelli's personal membership interest in the face of the Capital
15 Call; (b) facilitating Mr. Iannelli's collection efforts on the Iannelli Note, in his
16 personal capacity, even though the Iannelli Note was funded via Mr. Iannelli's
17 unlawful diversion of Essex funds and, therefore, Essex, not Mr. Iannelli, has a right
18 to the return of the funds underlying the Iannelli Note; (c) representing Mr. Iannelli
19 in connection with CVL's formation and the Agreement, pursuant to which
20 Mr. Iannelli diverted funds from Essex and caused Essex to incur significant
21 repayment obligations to Mr. Gally and CVL, by virtue of the Gally Note, the CVL
22 Note, and the Essex-CVL Note; and (d) failing to exercise reasonable skill,
23 prudence, and diligence as attorneys of ordinary skill and capacity normally possess,
24 the Receivership Entities would have avoided certain exposure to liability to their
25 investors and creditors in connection with Essex's loans to CVL, a deepened state of
26 insolvency, and other financial harm.

27 84. As a direct and proximate result of Defendants', including Seed
28 Mackall's, negligence and breaches of fiduciary duty, the Receivership Entities

1 suffered financial losses and consequential damages including, but not limited to,
2 exposure to liability to their investors and creditors, and a deepened state of
3 insolvency, in an amount to be proven at trial, but not less than \$972,143.56.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Receiver prays for judgment against all Defendants, and
6 each of them, as follows:

7 **On Counts I, II, and III:**

- 8 A. For damages in an amount according to proof at trial, but in an amount
9 not less than \$972,143.56;
- 10 B. For pre-judgment interest, as allowed by law;
- 11 C. For costs of suit herein incurred;
- 12 D. For disgorgement of purported legal fees and similar compensation
13 paid in connection with CVL, the Lumber Yard, the Agreement, and Essex's loans
14 to CVL; and
- 15 E. For such other and further relief as the Court may deem just and proper.

16
17 Dated:

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

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19
20
21 By: _____

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

DR
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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 **August 10, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **NOTICE OF MOTION AND MOTION OF RECEIVER, GEOFF WINKLER, FOR AUTHORITY TO PROSECUTE CLAIMS AGAINST SEED MACKALL LLP; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.**

- 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 **August 10, 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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