

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 WESTERN DIVISION

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

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

24 Defendants.

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

DECLARATION OF RECEIVER,
GEOFF WINKLER, IN SUPPORT OF
MOTION FOR AUTHORITY TO
ESTABLISH DISGORGEMENT
PROCEDURES AND UNDERTAKE
DISGORGEMENT EFFORTS

[Notice of Motion and Motion; and
[Proposed] Order submitted concurrently
herewith]

Date: November 12, 2020

Time: 10:00 a.m.

Ctrm: 6D

Judge Hon. Fernando M. Olguin

DECLARATION OF GEOFF WINKLER

I, Geoff Winkler, declare as follows:

1. I am the Court-appointed permanent receiver (the "Receiver") for Defendant Essex Capital Corporation ("Essex") and its subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities") in the above-entitled matter. I have personal knowledge of the facts set forth in this Declaration, and make this Declaration in support of my concurrently filed Motion for Authority to Establish

1 Disgorgement Procedures and Undertake Disgorgement Efforts (the "Motion"). I
2 was appointed as Receiver for the Entities on December 21, 2018, by virtue of this
3 Court's Order Regarding Preliminary Injunction and Appointment of a Permanent
4 Receiver (the "Appointment Order") (ECF No. 66), and was vested with exclusive
5 authority and control over the Receivership Entities and their assets ("Receivership
6 Assets" or "Assets"). On September 9, 2019, the Court entered its Order Regarding
7 Permanent Injunction (the "Permanent Injunction") (ECF No. 113), which
8 reaffirmed the authority initially conveyed upon me via the Appointment Order.

9 2. In connection with my duties as Receiver, I and my staff have reviewed
10 more than 500,000 pages of materials, reflecting hundreds of thousands of
11 individual transactions, relating to the business and financial activities of the
12 Receivership Entities.

13 3. This effort has enabled me to identify and quantify a significant portion
14 of those Entity transactions relating to potentially recoverable Assets. On the basis
15 of my review, I have confirmed that the operations of the Receivership Entities were
16 not profitable, and were unsustainable absent ongoing infusions of new funds from
17 investors or lenders. I further confirmed that Essex's payments of so-called returns
18 on investments to certain investors were funded in substantial part by money
19 obtained from new investors, in a manner consistent with the operation of a Ponzi
20 scheme. On this basis, and as detailed significantly in my prior submissions to the
21 Court, including my Forensic and Investigative Accounting Report, I have
22 concluded and reported that the activities of the Receivership Entities bear the
23 hallmarks of a Ponzi investment scheme.

24 4. Via my analysis and accounting of the Entities' transactions, I have
25 confirmed that certain Receivership Entity investors ("Net Winners") were paid
26 more than the aggregate amounts they invested in the Entities, while other investors
27 ("Net Losers") lost money on their investments. I have determined, in my
28 reasonable business judgment, that in order to recover and return as much as

1 possible to the investors and creditors of the Entities, including Net Losers, it is
2 necessary and appropriate to pursue recovery of profits paid to the Net Winners.
3 My investigation and accounting has identified at least fifty-one (51) potential Net
4 Winners, who, collectively, appear to have been paid profits in excess of their
5 principal investments in an aggregate amount that may exceed \$25 million.

6 5. Based upon my experience, and a comprehensive review of materials
7 from comparable federal equity receiverships in this district, I believe that average
8 recoveries from the Net Winners are unlikely to reach 100% of each Net Winner's
9 individual respective profits ("Profit Amount").

10 6. Accordingly, I recommend that I be authorized to undertake
11 disgorgement procedures tailored to enable me to pursue recoveries from Net
12 Winners which minimize the costs to the receivership estate, while maximizing
13 funds (including any recoveries from Net Winners) available for distribution to Net
14 Losers and other Entity creditors whose claims are ultimately allowed by the Court.
15 My recommended procedures are as follows:

16 **I. Settlements.**

17 7. Net Winners will be provided with an opportunity and incentive to
18 settle claims for the recovery of Profit Amounts prior to incurring the cost and delay
19 of litigation. Accordingly, I propose sending demand letters to all Net Winners
20 whom I have determined to pursue for reimbursement of Profit Amounts which
21 shall: (a) identify my calculation of the Net Winner's Profit Amount; (b) state the
22 my intention to pursue claims against the Net Winner to recover the Profit Amount,
23 along with a brief description of the basis for such claims; and (c) offer to settle my
24 claims prior to the commencement of litigation for 60% of the Profit Amount, if
25 payment is made in a lump sum, and within ninety (90) days of demand, or 67.5%
26 of the Profit Amount if payment is made over time, not to exceed twelve (12)
27 monthly installments. The demand letter will also advise that such preliminary
28 offers to settle shall expire sixty (60) days after its transmittal date. In order to

1 effectuate the procedures set forth in the Motion, I believe that I must be vested with
2 the discretion to fashion settlement agreements and releases as I deem appropriate,
3 in my reasonable business judgment.

4 8. In order to accept any pre-litigation settlement offer, a Net Winner
5 must: (a) confirm, in writing within sixty (60) days of the transmittal of the demand
6 letter, his or her intent to settle; (b) execute a settlement agreement, along with a
7 stipulated judgment in the amount of his or her total Profit Amount, and return both
8 the executed settlement agreement and stipulated judgment to me within one
9 hundred and five (105) days of the transmittal of the initial demand letter. I
10 respectfully request that settlement agreements executed in accordance with these
11 procedures be effective immediately, without further Court approval.

12 9. I will hold stipulated judgments and not file any of them with the Court
13 or otherwise seek their enforcement, provided a settling Net Winner timely makes
14 all payments required under the applicable settlement agreement. If a settling Net
15 Winner defaults on any payment, or otherwise fails to timely make all required
16 payments, and does not cure such default within ten (10) calendar days of such
17 default, I may, in my sole discretion, file a complaint in this Court against the Net
18 Winner together with the stipulated judgment, and promptly request entry of the
19 stipulated judgment. In the event that any initial settlement offer lapses, either by
20 failure of a Net Winner to respond or otherwise, I may, in my sole discretion and
21 exercising my reasonable business judgment, file a complaint in this Court against
22 any Net Winner, subject to the proposed litigation procedures described in the
23 Motion. In the event that a Net Winner seeks to settle after a complaint is filed, but
24 before litigation is concluded, the 60% and 67.5% settlement thresholds above will
25 be raised to 80% and 90%, respectively, as will be stated in the demand letter.

26 **II. Litigation.**

27 10. In the event that any initial settlement offer lapses, either by failure of a
28 Net Winner to respond or otherwise, I would then be authorized, without further

1 order of the Court, to initiate litigation against the Net Winner. In order to minimize
2 the administrative expenses associated with any claims against Net Winners, and to
3 maximize judicial efficiency, I propose that all actions relating to such claims be
4 prosecuted in this Court, which can exercise ancillary and supplemental jurisdiction
5 over such claims pursuant to 28 U.S.C. §§ 1345 and 1367(a). Accordingly, in
6 connection with the filing of any action against a Net Winner in this Court, I
7 propose promptly filing a notice of related action with each such complaint, in
8 compliance with L.R. 83-1.3.1.

9 I declare under penalty of perjury that the foregoing is true and correct.
10 Executed this 8th day of October, 2020, at Salem, Oregon.

11
12 

13 GEOFF WINKLER
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 **October 13, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **DECLARATION OF RECEIVER, GEOFF WINKLER, IN SUPPORT OF MOTION FOR AUTHORITY TO ESTABLISH DISGORGEMENT PROCEDURES AND UNDERTAKE DISGORGEMENT EFFORTS**

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 **October 13, 2020** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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