

1 A. Barry Cappello (CSB No. 037835)
David L. Cousineau (CSB No. 298801)
2 **CAPPELLO & NOËL LLP**
831 State Street
3 Santa Barbara, CA 93101-3227
Telephone: (805) 564-2444
4 Facsimile: (805) 965-5950

5 Attorneys for Defendant
915 Elm Avenue CVL, LLC
6

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 Case No. 2:21-cv-00869

12 GEOFF WINKLER, RECEIVER,

13 Plaintiff,

14 v.

15 915 ELM AVENUE CVL, LLC,

16 Defendant.
17
18

**DEFENDANT 915 ELM AVENUE
CVL, LLC'S ANSWER TO
COMPLAINT OF RECEIVER
FOR DAMAGES AND
DECLARATORY RELIEF
DEMAND FOR JURY TRIAL**

19
20
21
22
23
24
25
26
27
28

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

ANSWER

Defendant 915 Elm Avenue CVL, LLC (“CVL” or “Defendant”) hereby answers the allegations of Plaintiff, Geoff Winkler, Receiver (“Receiver” or “Plaintiff”), contained in his Complaint (the “Complaint”) as follows:

JURISDICTION AND VENUE

1. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, CVL denies that this action arises from a common nucleus of operative facts as, or is substantially related to, the original claims in the Enforcement Action.¹

2. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, CVL admits that this Court may exercise personal jurisdiction over CVL.

3. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, CVL admits that venue in this District is proper. CVL otherwise denies the allegations in this paragraph.

PARTIES

4. CVL admits that the Receiver is the duly appointed permanent receiver for the Receivership Entities, and clarifies that CVL is not one of the Receivership Entities. The remaining allegations in this paragraph are legal conclusions to which no response is required. To the extent that a response is required, CVL admits that the Appointment Order and Permanent Injunction control the Receiver’s duties and obligations. CVL otherwise denies the allegations in this paragraph.

5. CVL admits the allegations in this paragraph.

¹ If not otherwise defined herein, capitalized terms have the same meaning as in the Complaint.

FACTUAL ALLEGATIONS

1
2 6. CVL denies that the SEC Complaint was filed on June 3, 2019. The
3 rest of the allegations in this paragraph are characterizations of the SEC
4 Complaint, which speaks for itself, and CVL denies those characterizations. CVL
5 lacks sufficient knowledge or information to admit or deny the substance of the
6 allegations the Commission made in the SEC Complaint that the Receiver
7 incorporates into this paragraph, and on that basis denies them.

8 7. The allegations in this paragraph are characterizations of the SEC
9 Complaint, which speaks for itself, and CVL denies those characterizations. CVL
10 lacks sufficient knowledge or information to admit or deny the substance of the
11 allegations the Commission made in the SEC Complaint that the Receiver
12 incorporates into this paragraph, and on that basis denies them.

13 8. The rest of the allegations in this paragraph are characterizations of
14 the SEC Complaint, which speaks for itself, and CVL denies those
15 characterizations. CVL lacks sufficient knowledge or information to admit or
16 deny the substance of the allegations the Commission made in the SEC Complaint
17 that the Receiver incorporates into this paragraph, and on that basis denies them.

18 9. The rest of the allegations in this paragraph are characterizations of
19 the SEC Complaint, which speaks for itself, and CVL denies those
20 characterizations. CVL lacks sufficient knowledge or information to admit or
21 deny the substance of the allegations the Commission made in the SEC Complaint
22 that the Receiver incorporates into this paragraph, and on that basis denies them.

23 10. CVL lacks sufficient knowledge or information to admit or deny the
24 allegations in this paragraph, and on that basis denies them.

25 11. CVL admits that Mr. Iannelli and Mr. Reyner established CVL in
26 November 2015 to purchase the Lumber Yard. CVL denies that the Sellers were
27 J&G Clay Properties, LLC and its principal, James Gally.

28 ///

1 12. CVL admits that as part of the purchase of the Lumber Yard, Essex
2 issued to Mr. Gally, on or about January 14, 2016, the Gally Note, in the principal
3 amount of \$1,500,000. To the extent Plaintiff characterizes the Gally Note, the
4 note speaks for itself, and CVL denies that characterization.

5 13. CVL admits that under the terms of the Gally Note, \$250,000 was to
6 be paid one year from the date of the Gally Note, and the remaining principal was
7 to be paid on the third anniversary of the Gally Note. Plaintiff's characterization
8 of Essex's legal obligations under the Gally Note are legal conclusions to which
9 no response is required. To the extent a response is required, CVL denies those
10 characterizations.

11 14. CVL lacks sufficient knowledge or information to admit or deny the
12 allegations in this paragraph, and on that basis denies them. Plaintiff's
13 characterization of Essex's legal obligations under the Gally Note are legal
14 conclusions to which no response is required. To the extent a response is required,
15 CVL denies those characterizations.

16 15. CVL denies that the CVL Note was a "companion note" to the Gally
17 Note and that it was executed on or around January 14, 2016. The rest of the
18 allegations in this paragraph are characterizations of certain documents that speak
19 for themselves, and CVL denies those characterizations.

20 16. CVL admits that the CVL Note was intended to acknowledge Essex's
21 debt to Gally, but denies that it was intended to require a payment from CVL to
22 Essex. CVL admits that on July 10, 2019, the Receiver, through counsel,
23 demanded that CVL pay the CVL Note.

24 17. The allegations in this paragraph are characterizations of a document
25 that speaks for itself, and CVL denies those characterizations. Plaintiff's
26 allegation that the CVL Note "matured" and is "in default," are legal conclusions
27 to which no response is required. To the extent a response is required, CVL denies
28 the allegations.

1 18. CVL admits that on or around October 14, 2016, CVL issued the
2 Second CVL Note in the principal amount of \$125,000. To the extent Plaintiff
3 characterizes CVL’s legal obligations under the Second CVL Note, that
4 characterization is a legal conclusion to which no response is required. To the
5 extent a response is required, CVL denies that characterization.

6 19. CVL admits that on July 10, 2019, the Receiver, through counsel,
7 demanded that CVL pay the Second CVL Note.

8 20. CVL admits the allegations in this paragraph.

9 21. CVL admits that it informed the Receiver that it had no obligation to
10 repay the rest of the CVL Note or the Second CVL Note and that the notes are not
11 enforceable. Plaintiff’s allegation that CVL “disclaimed its repayment
12 obligations” is a legal conclusion to which no response is required. To the extent a
13 response is required, CVL denies the allegation.

14 22. The allegations in this paragraph are legal conclusions to which no
15 response is required. To the extent a response is required, CVL denies the
16 allegations.

17 23. CVL lacks sufficient knowledge or information to admit or deny the
18 allegations in this paragraph, and on that basis denies them.

19 24. CVL lacks sufficient knowledge or information to admit or deny the
20 allegations in this paragraph, and on that basis denies them.

21 25. CVL admits that on or around January 13, 2016, \$393,460 was
22 transferred to CVL. CVL lacks sufficient knowledge or information to admit or
23 deny the remaining allegations in this paragraph, and on that basis denies them.

24 26. CVL lacks sufficient knowledge or information to admit or deny the
25 allegations in this paragraph, and on that basis denies them.

26 27. CVL admits that on or around July 12, 2016, \$125,000 was
27 transferred to CVL. CVL lacks sufficient knowledge or information to admit or
28 deny the remaining allegations in this paragraph, and on that basis denies them.

1 28. CVL lacks sufficient knowledge or information to admit or deny the
2 allegations in this paragraph, and on that basis denies them.

3 29. CVL admits that on or about October 13, 2016, a transfer of \$125,000
4 was made to CVL. CVL lacks sufficient knowledge or information to admit or
5 deny the remaining allegations in this paragraph, and on that basis denies them.

6 30. CVL lacks sufficient knowledge or information to admit or deny the
7 allegations in this paragraph, and on that basis denies them.

8 31. The allegations in this paragraph are characterizations of certain
9 documents and transactions which speak for themselves, and CVL denies those
10 characterizations. CVL lacks sufficient knowledge or information to admit or
11 deny what rights Essex may or may not have had in CVL or the Lumber Yard at
12 the time of the “foregoing transfers.”

13 32. CVL admits that the William S. Reyner, Jr. Trust has a 29.64%
14 membership interest in CVL and that Reyner Family Partners, L.P. has a 29.64%
15 membership interest. CVL was informed by counsel for the Receiver that Essex
16 now owns Mr. Iannelli’s interests and possibly the interests of Ralph T. Iannelli
17 III, and on that basis denies the remainder of the allegations in this paragraph.

18 33. CVL admits the allegations in this paragraph.

19 34. CVL admits that in or around July 2018 it made at least one capital
20 call which Mr. Iannelli and Ralph T. Iannelli III did not satisfy, and that as a result
21 Mr. Iannelli’s percentage interest in CVL decreased from 57% to 39.04%. CVL
22 lacks sufficient knowledge or information to admit or deny the remaining
23 allegations in this paragraph.

24 35. CVL denies the allegations in this paragraph.

25 36. CVL lacks sufficient knowledge or information to admit or deny the
26 allegations in this paragraph, and on that basis denies them.

27 ///

28 ///

COUNT I – AVOIDANCE AND RECOVERY OF ACTUAL FRAUDULENT TRANSFERS

(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07)

37. CVL repeats and incorporates by reference each and every response stated herein to each allegation in Plaintiff’s Complaint, as if fully restated here.

38. CVL lacks sufficient knowledge or information to admit or deny the allegations in this paragraph, and on that basis denies them.

39. CVL denies that it received at least \$643,000 in aggregate transfers from Essex. CVL lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph, and on that basis denies them.

40. CVL lacks sufficient knowledge or information to admit or deny the allegations in this paragraph, and on that basis denies them.

41. CVL lacks sufficient knowledge or information to admit or deny the allegations in this paragraph, and on that basis denies them.

42. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, CVL denies the allegations in this paragraph and the implication in the paragraph that it did not provide reasonably equivalent value for any transfers of money that it received.

43. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, CVL denies the allegations in this paragraph and the implication in the paragraph that it did not provide reasonably equivalent value for any transfers of money that it received.

COUNT II – AVOIDANCE AND RECOVERY OF CONSTRUCTIVELY FRAUDULENT TRANSFERS

(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07)

44. CVL repeats and incorporates by reference each and every response stated herein to each allegation in Plaintiff’s Complaint, as if fully restated here.

///

1 45. CVL denies that it received at least \$643,000 in aggregate transfers
2 from Essex. CVL lacks sufficient knowledge or information to admit or deny the
3 remaining allegations in this paragraph, and on that basis denies them.

4 46. CVL denies that it did not provide reasonably equivalent value in
5 exchange for any transfers of money that it received.

6 47. CVL lacks sufficient knowledge or information to admit or deny the
7 allegations in this paragraph, and on that basis denies them.

8 48. CVL lacks sufficient knowledge or information to admit or deny the
9 allegations in this paragraph, and on that basis denies them.

10 49. CVL lacks sufficient knowledge or information to admit or deny the
11 allegations in this paragraph, and on that basis denies them.

12 50. The allegations in this paragraph are legal conclusions to which no
13 response is required. To the extent a response is required, CVL denies the
14 allegations in this paragraph and the implication in the paragraph that it did not
15 provide reasonably equivalent value for any transfers of money that it received.

16 51. The allegations in this paragraph are legal conclusions to which no
17 response is required. To the extent a response is required, CVL denies the
18 allegations in this paragraph and the implication in the paragraph that it did not
19 provide reasonably equivalent value for any transfers of money that it received.

20 **COUNT III – BREACH OF CONTRACT**

21 **(as against CVL)**

22 52. CVL repeats and incorporates by reference each and every response
23 stated herein to each allegation in Plaintiff’s Complaint, as if fully restated here.

24 53. CVL admits that Exhibit 1 contains a true and correct copy of the
25 CVL Note. The remaining allegations in this paragraph are legal conclusions to
26 which no response is required. To the extent a response is required, CVL denies
27 the allegations.

28 ///

1 54. CVL denies the allegations in this paragraph.

2 55. CVL denies the allegations in his paragraph.

3 56. CVL denies that it failed to make any payment in connection with the
4 CVL Note. CVL admits that it informed the Receiver that it had no obligation to
5 repay the rest of the CVL Note and that the note is not enforceable. Plaintiff's
6 allegation that CVL "disclaimed its repayment obligations" and "breach[ed] its
7 contractual obligations" are legal conclusions to which no response is required.
8 To the extent a response is required, CVL denies the allegations.

9 57. The allegations in this paragraph are legal conclusions to which no
10 response is required. To the extent a response is required, CVL denies the
11 allegations.

12 58. The allegations in this paragraph are legal conclusions to which no
13 response is required. To the extent a response is required, CVL denies the
14 allegations.

15 **COUNT IV – BREACH OF CONTRACT**

16 **(as against CVL)**

17 59. CVL repeats and incorporates by reference each and every response
18 stated herein to each allegation in Plaintiff's Complaint, as if fully restated here.

19 60. CVL admits that Exhibit 2 contains a true and correct copy of the
20 Second CVL Note. The remaining allegations in this paragraph are legal
21 conclusions to which no response is required. To the extent a response is required,
22 CVL denies the allegations.

23 61. CVL denies the allegations in this paragraph.

24 62. CVL denies the allegations in this paragraph.

25 63. CVL admits the allegations in this paragraph.

26 64. CVL admits the allegations in this paragraph.

27 65. CVL denies that it failed to make any payment in connection with the
28 Second CVL Note. CVL admits that it informed the Receiver that it had no

1 obligation to repay the rest of the Second CVL Note and that the note is not
2 enforceable. Plaintiff’s allegations that CVL “disclaimed its repayment
3 obligations” and “breach[ed] its contractual obligations” are legal conclusions to
4 which no response is required. To the extent a response is required, CVL denies
5 the allegations.

6 66. The allegations in this paragraph are legal conclusions to which no
7 response is required. To the extent a response is required, CVL denies the
8 allegations.

9 67. The allegations in this paragraph are legal conclusions to which no
10 response is required. To the extent a response is required, CVL denies the
11 allegations.

12 **COUNT V – UNJUST ENRICHMENT**
13 **(as against CVL)**

14 68. CVL repeats and incorporates by reference each and every response
15 stated herein to each allegation in Plaintiff’s Complaint, as if fully restated here.

16 69. CVL denies that Essex has received no benefit from any of its funds
17 or obligations Mr. Iannelli might have used for CVL. CVL lacks sufficient
18 knowledge or information to admit or deny the remaining allegations in this
19 paragraph, and on that basis denies them.

20 70. The allegations in this paragraph are characterizations of certain
21 documents and transactions which speak for themselves, and CVL denies those
22 characterizations. CVL lacks sufficient knowledge or information to admit or
23 deny what rights Essex may or may not have had in CVL or the Lumber Yard at
24 the time of the “foregoing transfers,” and on that basis denies the allegation.

25 71. CVL denies the allegations in this paragraph. Plaintiff’s allegation
26 that CVL “disclaimed its repayment obligations” is a legal conclusion to which no
27 response is required. To the extent a response is required, CVL denies the
28 allegation.

1 72. The allegations in this paragraph are legal conclusions to which no
2 response is required. To the extent a response is required, CVL denies the
3 allegations.

4 73. The allegations in this paragraph are legal conclusions to which no
5 response is required. To the extent a response is required, CVL denies the
6 allegations.

7 **COUNT VI – DECLARATORY RELIEF**
8 **(as against CVL)**

9 74. CVL repeats and incorporates by reference each and every response
10 stated herein to each allegation in Plaintiff’s Complaint, as if fully restated here.

11 75. CVL denies that Essex has received no benefit from any of its funds
12 or obligations Mr. Iannelli might have used for CVL. CVL lacks sufficient
13 knowledge or information to admit or deny the remaining allegations in this
14 paragraph, and on that basis denies them.

15 76. The allegations in this paragraph are characterizations of certain
16 documents and transactions which speak for themselves, and CVL denies those
17 characterizations. CVL lacks sufficient knowledge or information to admit or
18 deny what rights Essex may or may not have had in CVL or the Lumber Yard at
19 the time the referenced obligations were expended or incurred, and on that basis
20 denies the allegation.

21 77. The allegations in this paragraph are legal conclusions to which no
22 response is required. To the extent a response is required, CVL denies the
23 allegations.

24 78. CVL denies the allegations in this paragraph.

25 79. CVL admits that when Mr. Iannelli did not satisfy capital calls, the
26 value of his interest in CVL decreased from 57% to 39.04%. CVL denies the
27 remaining allegations in this paragraph.

28 ///

1 80. CVL admits that Plaintiff seeks a determination as to the percentage
2 interest the Receiver holds in CVL. CVL lacks sufficient knowledge or
3 information to form a belief as to Plaintiff's "desire" for this kind of relief, and on
4 that basis denies the allegation.

5 **PRAYER FOR RELIEF**

6 CVL denies that Plaintiff is entitled to any of the relief it seeks.
7

8 **DEFENDANT'S AFFIRMATIVE DEFENSES**

9 Without assuming any burden of proof that it would not otherwise bear, CVL
10 asserts the following separate and additional affirmative defenses, all of which are
11 pleaded in the alternative.
12

13 **First Defense**

14 81. The Complaint fails to state a claim against CVL upon which relief
15 can be granted.

16 **Second Defense**

17 82. Plaintiff's claims are barred, in whole or in part, because Plaintiff has
18 not suffered injury proximately caused by any conduct of CVL.

19 **Third Defense**

20 83. Plaintiff is barred from recovery of any damages because of and to
21 the extent of its failure to mitigate any such damages.
22

23 **Fourth Defense**

24 84. Plaintiff's claims are barred, in whole or in part, to the extent that
25 Plaintiff seeks damages that constitute duplicative recovery for the same conduct.

26 **Fifth Defense**

27 85. Plaintiff's claims are barred, in whole or in part, to the extent that
28 Plaintiff seeks damages that constitute duplicative recovery prohibited by the Due

1 Process Clause of the U.S. Constitution, state constitutions, or relevant state laws.

2 **Sixth Defense**

3 86. Plaintiff's claims are barred, in whole or in part, by the doctrine of
4 unclean hands.

5 **Seventh Defense**

6 87. Plaintiff's claims are barred, in whole or in part, because Essex did
7 not perform the conditions precedent to CVL's obligations, if any, to perform on
8 the CVL Note and the Second CVL Note.

9 **Eighth Defense**

10 88. Plaintiff's claims are barred, in whole or in part, due to failure of
11 consideration.

12 **Ninth Defense**

13 89. Plaintiff's claims are barred, in whole or in part, because Mr. Iannelli
14 fraudulently induced CVL to enter the CVL Note and the Second CVL Note. Mr.
15 Iannelli represented to Mr. Reyner and CVL that Mr. Iannelli would take on the
16 risk of the higher purchase price than Mr. Reyner was willing to impose on CVL
17 and of the seller financing through the Gally Note. Mr. Iannelli knew that the
18 representations were not true, but nonetheless made the representations to
19 persuade Mr. Reyner and CVL to agree to enter the CVL Note and the Second
20 CVL Note. Mr. Reyner and CVL reasonably relied on these representations: they
21 only agreed to have CVL incur these obligations based on the understanding that
22 Mr. Iannelli's representations were truthful. Mr. Reyner and CVL would not have
23 entered the CVL Note or the Second CVL Note had they known that Mr. Iannelli's
24 representations were not true.
25

26 **Tenth Defense**

27 90. Plaintiff's claims are barred, in whole or in part, due to Mr. Iannelli's
28

1 negligent misrepresentations that induced CVL to enter the CVL Note and the
2 Second CVL Note. Mr. Iannelli represented to Mr. Reyner and CVL that Mr.
3 Iannelli would take on the risk of the higher purchase price than Mr. Reyner was
4 willing to impose on CVL and of the seller financing through the Gally Note.
5 Those representations were false, and Mr. Iannelli had no reasonable grounds for
6 believing the representations to be true when he made them. Mr. Iannelli further
7 intended for Mr. Reyner and CVL to rely on those representations, and Mr. Reyner
8 and CVL in fact did reasonably rely on them: they only agreed to have CVL incur
9 these obligations based on the understanding that Mr. Iannelli's representations
10 were truthful. Mr. Reyner's and CVL's reliance on these representations was a
11 substantial factor in causing CVL's harm because it would not have incurred these
12 obligations if it were not for Mr. Iannelli's misrepresentations.

13 **Eleventh Defense**

14 91. Plaintiff's claims are barred, in whole or in part, due to mistake of
15 fact by CVL as related to responsibility for the CVL Note and the Second CVL
16 Note.

17 **Twelfth Defense**

18 92. Plaintiff's claims are barred, in whole or in part, because there was no
19 meeting of the minds as to the CVL Note and the Second CVL Note.

20 **Thirteenth Defense**

21 93. Plaintiff's claims are barred, in whole or in part, because Essex failed
22 to perform its obligations related to the CVL Note and the Second CVL Note.

23 **RESERVATION OF DEFENSES AND AFFIRMATIVE DEFENSES**

24 CVL reserves the right to assert and rely on any additional defenses and
25 affirmative defenses that may come available or apparent, and to amend its answer
26 and/or defenses.
27
28

PRAYER FOR RELIEF

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

WHEREFORE, CVL demands a trial by jury on all issues so triable, and CVL respectfully requests entry of judgment granting the following relief:

- Dismissing the claims in the Complaint in their entirety, with prejudice;
- Awarding the costs of defending this action, including attorneys’ fees, costs, and disbursements; and
- Granting such other and further relief as this Court may deem just and proper.

DATED: April 2, 2021

CAPPELLO & NOËL LLP

By: /s/ David L. Cousineau

A. Barry Cappello
David L. Cousineau
Attorneys for
915 Elm Avenue CVL, LLC

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

DEMAND FOR JURY TRIAL

CVL hereby demands a jury trial for all issues so triable.

DATED: April 2, 2021

CAPPELLO & NOËL LLP

By: /s/ David L. Cousineau

A. Barry Cappello
David L. Cousineau
Attorneys for
915 Elm Avenue CVL, LLC

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

CERTIFICATE OF SERVICE

I, David L. Cousineau, hereby certify that on April 2, 2021, I caused the foregoing **DEFENDANT 915 ELM AVENUE CVL, LLC’S ANSWER TO COMPLAINT OF RECEIVER FOR DAMAGES AND DECLARATORY RELIEF** to be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ David L. Cousineau

David L. Cousineau