

1 DAVID R. ZARO (BAR NO. 124334)  
 2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)  
 3 MATTHEW D. PHAM (BAR NO. 287704)  
 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 mpham@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

REPLY IN SUPPORT OF MOTION OF  
 RECEIVER, GEOFF WINKLER, FOR  
 ORDER: (1) APPROVING PROPOSED  
 DISTRIBUTION PLAN;  
 (2) APPROVING RECOMMENDED  
 TREATMENT OF CLAIMS; AND  
 (3) AUTHORIZING DISTRIBUTIONS  
 ON ALLOWED CLAIMS

[Declaration of Receiver, Geoff Winkler,  
 submitted concurrently herewith]

Date: January 20, 2022  
 Time: 10:00 a.m.  
 Ctrm: 6D  
 Judge Hon. Fernando M. Olguin

25 **TO THIS HONORABLE COURT AND ALL INTERESTED PARTIES:**  
 26 **PLEASE TAKE NOTICE THAT** Geoff Winkler (the "Receiver"), the  
 27 Court-appointed permanent receiver for Essex Capital Corporation ("Essex") and its  
 28 subsidiaries and affiliates (collectively, with Essex, the "Receivership Entities") in  
 the above-entitled action hereby submits his Reply in support of his pending Motion

1 for Order: (1) Approving Proposed Distribution Plan; (2) Approving Recommended  
2 Treatment of Claims; and (3) Authorizing Distribution on Allowed Claims (ECF.  
3 No. 220), as follows:

4 **I. INTRODUCTION.**

5 As reflected in the Court's record, only one (1) limited objection to the  
6 Receiver's Motion has been filed, by investor claimant Paul Wolansky.  
7 Mr. Wolansky's limited objection (the "Objection") (ECF No. 224) does not object  
8 to the Receiver's proposed distribution plan, but instead challenges the Receiver's  
9 recommended amount of Mr. Wolansky's claim, based on arguments that the  
10 Receiver: (a) miscredited him with the receipt of certain shares (the "NEOS shares")  
11 that were never received by him; (b) applied an inaccurate valuation to a New York  
12 condominium (the "Condo"), a lien against which was given to Mr. Wolansky in  
13 lieu of repayment by the Receivership Entities' principal, Ralph Iannelli; and  
14 (c) improperly double-counted certain cash transfers made to Mr. Wolansky in  
15 connection with his investment in the Receivership Entities. As reflected below,  
16 while the Receiver does not agree entirely with Mr. Wolansky, on the basis of  
17 information received after the Motion was filed, the Receiver believes that  
18 Mr. Wolansky's claim should be adjusted from \$852,095.00, as originally  
19 recommended in the Motion, to \$1,306,259.47.

20 **II. RELEVANT FACTUAL BACKGROUND.**

21 As reflected in the claims register appended in support of the Receiver's  
22 Motion, Mr. Wolansky's claim was initially recommended for allowance in the  
23 amount of \$852,095.00. After the Motion was filed, Mr. Wolansky provided the  
24 Receiver with additional information and documents to support his proof of claim.  
25 (See concurrently submitted Declaration of Geoff Winker ["Winkler Decl"] ¶ 3.)  
26 The Receiver reviewed the additional evidence, further investigated several aspects  
27 of Mr. Wolansky's claim and devoted significant time to encouraging Mr. Wolansky  
28 to provide more specific information that could be used by the Receiver to

1 substantiate his position. (Id. at ¶ 3-4.) After lengthy discussions with  
2 Mr. Wolansky's counsel, the Receiver has concluded, based on the information  
3 provided through counsel, that Mr. Wolansky's claim should be increased to reflect  
4 that he did not receive certain payments in-kind, notwithstanding that the records of  
5 the Receiver reflect the transfers. Specifically, the Receiver recommends that  
6 Mr. Wolansky's allowed claim amount be increased to \$1,306,259.47. (Id. at ¶ 2.)  
7 This change reflects the Receiver's acceptance of Mr. Wolansky's sworn declaration.  
8 that he did not receive the NEOS shares, notwithstanding entries in records obtained  
9 by the Receiver establishing the Receivership Entities' intent to transfer the NEOS  
10 shares to Mr. Wolansky. As to the remainder of Mr. Wolansky's arguments, the  
11 Receiver simply cannot agree.

12 **III. ARGUMENT.**

13 With respect to the disputed claims, this Court's Local Rules provide that the  
14 Estate should be administered "as nearly as possible in accordance with the practice  
15 of the administration of estates in bankruptcy." See L.R. 66-8. Accordingly, as in a  
16 bankruptcy case, it is a claimant's burden to establish a valid claim against the  
17 Estate, not the Receiver's burden to establish why that claim is improper or  
18 inaccurate. See Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039  
19 (9th Cir. 2000); Revere Copper & Brass, Inc. v. Adriance Machine Works, Inc., 76  
20 F.2d 876, 878 (2d Cir. 1935) (claimants failed to sustain burden of proving claims  
21 against receivership).

22 With respect to Mr. Wolansky's disputed claim, his claim was complex  
23 because, after investing approximately \$5 million in cash, it appears that  
24 Mr. Wolansky "saw the writing on the wall" as to the Securities and Exchange  
25 Commission's ("SEC") investigation into, and the ultimate collapse of, the  
26 Receivership Entities. The materials obtained by the Receiver suggest that, as a  
27 result of Mr. Wolansky's insight into Essex's problems, he aggressively pursued  
28 repayment by, among other things, threats of lawsuits against Mr. Ianelli. (Winkler

1 Decl. ¶ 2-5.) This tactic appears to have been successful; Mr. Wolansky received  
2 significant transfers of assets in the months prior the SEC's filing its securities fraud  
3 Complaint in this matter.

4 The transfers to Mr. Wolansky largely consisted of non-cash assets. (Winkler  
5 Decl. ¶ 5.) As such, in considering Mr. Wolansky's claim, the Receiver has assessed  
6 the value the assets at the time of the transfers to Mr. Wolansky were made, rather  
7 than simply looking at bank records or bookkeeping entries reflecting cash transfers.  
8 (Id.) Mr. Wolansky has disagreed with certain of the Receiver's valuations;  
9 however, he has failed to carry his burden under the law, and has not presented any  
10 concrete evidence that would support his personal valuations.

11 As noted above, the Receiver proposes to allow Mr. Wolansky's claim in the  
12 amount of \$1,306,259.47, reflecting the adjustment associated with the NEOS  
13 shares. This leaves approximately \$378,852 in dispute, consisting of the following  
14 amounts: \$100,000 related to Mr. Wolansky's receipt of the Condo; \$80,000 in cash  
15 payments that Mr. Wolansky does not recognize; and \$198,000 arising out of the  
16 value of four performing equipment leases that were transferred to Mr. Wolansky in  
17 August of 2018.

18 With regard to the Condo, the Receiver has carefully reviewed the transaction  
19 and believes the records are clear. In exchange for the cancellation of a \$2 million  
20 dollar promissory note from the Receivership Entities, he was given the senior lien  
21 on the Condo, upon which he subsequently foreclosed. (Winkler Decl. ¶ 6-8.) In  
22 other words, as he describes in his declaration, Mr. Wolansky received the Condo in  
23 satisfaction of a \$2 million promissory note. Mr. Wolansky now seeks to take  
24 advantage of his own "credit bid" of \$1.9 million in connection with the transfer of  
25 the Condo. It is irrelevant what Mr. Wolansky ultimately decided to credit bid at a  
26 foreclosure sale or otherwise. He could have sold the Condo on the open market, or  
27 retained it for his personal use. In either event, his ownership or prospective  
28

1 retention of the Condo resulted from the cancellation of \$2 million in Receivership  
2 Entity debt, meaning the transaction must be valued at \$2 million.

3 Similarly, in August of 2018, apparently by threatening Mr. Iannelli with  
4 litigation, he convinced Mr. Iannelli to assign to him four (4) Essex equipment  
5 leases, all of which were performing, in satisfaction of a portion of his then  
6 outstanding investment. (Winkler Decl. ¶ 9.) The Receiver has valued the  
7 equipment leases as of the date of the transfer, based upon cash flows and the  
8 residual value of the equipment associated with the leases. As stated in the  
9 Receiver's attached declaration, the Receiver valued these leases at \$1,115,853.29.  
10 (Winkler Decl. ¶ 9.) Mr. Wolansky, on the other hand, has simply stated his belief  
11 that the leases were worth less, or have become worth less over time, based on their  
12 actual performance. He has presented no evidence to that effect, in contravention of  
13 the Lundell and Revere Copper & Brass standards. Whether or not the leases  
14 became worth more or less over time is simply irrelevant. What matters is the value  
15 of these leases at the time of the sale, and Mr. Wolansky has provided no evidence  
16 to rebut the Receiver's information.

17 Finally, Mr. Wolansky claims that a portion of the cash payments he received  
18 from Essex were in fact transfers of lease payments. As reflected in the Receiver's  
19 accounting, payments to Mr. Wolansky and others throughout the course of this  
20 matter came from pooled accounts which included money from all equipment  
21 leases, as well as (largely) funds from other investors. To suggest that he was the  
22 recipient of specific lease dollars from this Ponzi scheme is simply incorrect. His  
23 arguments as to those payment should therefore be disregarded.

24 As a consequence of the above, and because the Receiver accepts  
25 Mr. Wolansky's sworn testimony as to his non-receipt of the NEOS shares, the  
26 Receiver recommends increasing Mr. Wolansky's allowed claim amount to  
27 \$1,306,259.47 from \$852,095.00, as originally recommended in the Motion.  
28 Because Mr. Wolansky has not met his burden with respect to the remaining

1 components of his claim, the Receiver respectfully recommends those portions of  
2 his Objection be denied.

3 **IV. UPDATE REGARDING PROSPECTIVE INTERIM DISTRIBUTION.**

4 In his Motion, the Receiver advised that, if he was able by the time the Reply  
5 in support of his Motion was due, he would advise the Court of any contemplated  
6 initial distribution on allowed claims, including with respect to an estimated  
7 aggregate distribution amount. (See Motion at n. 2.) At present, and because the  
8 Receiver's tax preparation and asset recovery efforts remain ongoing, it is not  
9 possible to determine how much the Receiver will ultimately have available for  
10 distribution, and accordingly whether an initial distribution can be made in an  
11 amount sufficient to result in payments to all or nearly all creditors with allowed  
12 claims. Nonetheless, and assuming the Motion is granted, in the event that the  
13 Receiver determines such a distribution can be made, he will so advise the Court via  
14 separate pleading.

15 **V. CONCLUSION.**

16 For the foregoing reasons, and for the reasons stated in the Motion, the  
17 Receiver respectfully requests that this Court grant his pending Motion, subject to  
18 an increase in Mr. Wolansky's claim to \$1,306,259.47 from \$852,095.00, as  
19 originally recommended in the Motion.

20

21 Dated: January 6, 2022

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
MATTHEW D. PHAM

22

23

24

By:           /s/ David R. Zaro

25

DAVID R. ZARO  
Attorneys for Receiver  
GEOFF WINKLER

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 **January 6, 2022**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **REPLY IN SUPPORT OF MOTION OF RECEIVER, GEOFF WINKLER, FOR ORDER: (1) APPROVING PROPOSED DISTRIBUTION PLAN; (2) APPROVING RECOMMENDED TREATMENT OF CLAIMS; AND (3) AUTHORIZING DISTRIBUTIONS ON ALLOWED CLAIMS**

**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.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **January 6, 2022** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz