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 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 vs.

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

24 Defendants.

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

RECEIVER'S SEVENTEENTH
 INTERIM REPORT AND PETITION
 FOR FURTHER INSTRUCTIONS

Date: January 18, 2024
 Time: 10:00 a.m.
 Ctrm: 6D
 Judge Hon. Fernando M. Olguin

25 Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for
 26 defendant Essex Capital Corporation ("Essex") and its subsidiaries and affiliates
 27 (collectively, with Essex, the "Receivership Entities" or "Entities"), hereby submits
 28 the following Seventeenth Interim Report and Petition for Further Instructions (the
 "Report") for the period from July 1, 2023 through September 30, 2023 (the
 "Reporting Period"¹), in accordance with Rule 66-6 of the Local Civil Rules of the
 United States District Court for the Central District of California and the Court's

¹ While this Report largely addresses efforts undertaken during the Reporting Period, it necessarily makes reference to efforts or events occurring prior to or after the Reporting Period.

1 (a) *Order Regarding Preliminary Injunction and Appointment of a Permanent*
2 *Receiver* (the "Appointment Order"), ECF No. 66, entered on December 21, 2018;
3 (b) *Order in Aid of Receivership* (the "Order in Aid"), ECF No. 69, entered on
4 February 1, 2019; and (c) *Order Regarding Permanent Injunction* (the "Permanent
5 Injunction"), ECF No. 113, entered on September 9, 2019.

6 **I. PRELIMINARY STATEMENT**

7 During the Reporting Period, consistent with the Receiver's proposed course
8 of action set forth in his preceding *Sixteenth Interim Report and Petition for Further*
9 *Instructions* (ECF No. 268), the Receiver's efforts were largely directed at
10 identifying, recovering, and administering any remaining and available assets of the
11 Receivership Entities (the "Receivership Assets" or "Assets"), in the hopes of
12 completing his Asset recovery efforts as expediently and efficiently as possible, and
13 making an additional distribution to holders of allowed claims against the
14 receivership estate (the "Estate"). This Report summarizes the Receiver's efforts
15 during the Reporting Period.

16 During the Reporting Period, the Receiver took the following actions:

- 17 • Continued the prosecution of three (3) remaining disgorgement actions
18 brought by the Receiver against alleged profiting investors, seeking to
19 recover, at face value and in the aggregate, what the Receiver has alleged to
20 be over \$3 million in fictitious profits received by those investors. One (1)
21 of the remaining disgorgement actions settled after the close of the
22 Reporting Period, and the settlement has since been approved by this Court;
- 23 • Conducted a further evaluation of various securities and other equity Assets
24 of the Receivership Entities, and began liquidating such Assets in
25 accordance with the Court's prior orders, resulting in the recovery of
26 approximately \$1,500,000.00 for the benefit of the Estate during the
27 Reporting Period;

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- 1 • Continued to oversee the collection of payments from third parties pursuant
- 2 to earlier Court-approved settlement agreements;
- 3 • Continued to monitor and appear, as appropriate, in all known, pre-
- 4 receivership litigation pending in California state courts involving or
- 5 implicating the Receivership Entities or their Assets; and
- 6 • Refined his plans and accounting in connection with an anticipated
- 7 additional distributions of holders of allowed claims against the Estate.

8 In addition to the above, the Receiver has continued to administer the
9 remaining Assets of the Estate, and, as of the date of his most recent standardized
10 fund accounting report for the (the "SFAR"), attached hereto as **Exhibit 1**, held
11 approximately \$3.8 million, in cash on-hand for the administration and benefit of the
12 Receivership Entities and the Estate, in additional to other investment Assets and
13 unliquidated claims.²

14 **II. RELEVANT PROCEDURAL HISTORY**

15 While the relevant filings in the instant receivership are too voluminous to
16 list, the Receiver invites the Court and all interested parties to review the following
17 filings³ for the relevant factual and procedural background relating to the subjects
18 addressed in this Report:

- 19 • Plaintiff the Securities and Exchange Commission's *Complaint*, filed on
- 20 June 5, 2018 (ECF No. 1);
- 21 • The Appointment Order, entered on December 21, 2018 (ECF No. 66);
- 22 • The Order in Aid, entered on February 1, 2019 (ECF No. 69);
- 23 • The Permanent Injunction, entered on September 9, 2019 (ECF No. 113);
- 24 • The Receiver's prior interim reports (ECF Nos. 78, 103, 123, 149, 174, 197,
- 25 206, 210, 215, 229, 236, 243, 249, 256, 262, and 268);

26
27 ² This amount does not include the funds recovered, or expected to be recovered,
from the settlement discussed herein.

28 ³ These filings, as well as others, are available on the Receiver's website,
<https://essex-receivership.com/>.

- 1 • *The Stipulation for Order: (1) Establishing Claims Procedures; and*
2 *(2) Setting Claims Bar Date*, filed on April 20, 2020 (ECF No. 168) and the
3 order thereon, entered on July 31, 2020 (ECF No. 179);
- 4 • *The Motion of Receiver, Geoff Winkler, for Authority to Establish*
5 *Disgorgement Procedures and Undertake Disgorgement Efforts*, filed on
6 October 13, 2020 (ECF No. 190) and the order thereon, entered on
7 November 12, 2020 (ECF No. 195);
- 8 • *The Motion for Order: (1) Approving Proposed Distribution Plan;*
9 *(2) Approving Recommended Treatment of Claims; and (3) Authorizing*
10 *Distributions on Allowed Claims*, filed on December 21, 2021 (ECF
11 No. 220) and the order thereon, entered on April 19, 2022 (ECF No. 234);
12 and
- 13 • *The Motion of Receiver, Geoff Winkler, for Order Approving and*
14 *Authorizing Performance of Settlement Agreement*, filed on September 7,
15 2022 (ECF No. 241) and the order thereon, entered on September 19, 2022,
16 (ECF No. 246).

17 **III. THE RECEIVER'S ACTIVITIES AND EFFORTS DURING THE**
18 **REPORTING PERIOD**

19 As discussed extensively in the Receiver's prior interim reports, the Receiver
20 has been met with substantial success in his efforts to identify, marshal, administer,
21 and ultimately distribute Receivership Assets for the benefit of the Receivership
22 Entities, their Estate, and its creditors, and has continued such efforts through the
23 Reporting Period. These efforts are discussed below.

24 **A. Assets Held by Receivership.**

25 As reflected in his most recent SFAR, attached hereto as **Exhibit 1**, the
26 Receiver holds a total of approximately \$3.8 million, in cash or cash equivalents, for
27 the administration and benefit of the Receivership Entities. In addition, he continues
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1 to hold and administer non-cash Assets, along with outstanding and contingent
2 third-party disgorgement claims.

3 In accordance with his authority under the Appointment Order and Permanent
4 Injunction, along with certain other orders of the Court, during the Reporting Period,
5 the Receiver undertook efforts to value those stock and equity Assets in his
6 possession and control, and thereafter to identify prospective buyers for such Assets,
7 and to close the sale of certain stock Assets, resulting in the recovery of
8 approximately \$1.5 million in additional cash for the benefit of the Estate. The
9 Receiver remains in discussions with parties interested in purchasing the remaining
10 Assets in his possession and control, and is presently in the process of preparing
11 proposed purchase and sale agreements for a number of those Assets which, if
12 successfully sold, should result in additional recoveries in the low six-figures.

13 **B. Recovery of Receivership Assets.**

14 As reflected in prior interim reports, the Receiver, with assistance from his
15 lead counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"),
16 successfully brought and subsequently settled a number of Asset recovery actions,
17 primarily for the disgorgement of fictitious profits from Entity investors whom the
18 Receiver alleged to be "winners" in the Ponzi scheme conducted through the
19 Entities. The Receiver's disgorgement litigation efforts have been highly successful,
20 resulting in millions of dollars of recoveries for the Estate, and the Receiver
21 anticipates recovering additional funds as the remaining litigation is settled or
22 proceeds through trial. A brief update as to the status of the pending litigation
23 follows:

- 24 (a) *Winkler v. McCloskey, et al.*, Case No. 2:21-cv-05757-
25 FMO-AFM (the "McCloskey Action").

26 In the McCloskey Action, the Receiver initially calculated the defendants' net
27 profits to be in excess of \$1.2 million. As discussed in prior reports, this Court
28 denied the defendants' motion to compel arbitration, which they subsequently

1 appealed to the Ninth Circuit (Case No. 22-55856 and, here, the "McCloskey
2 Appeal"). At the end of the Reporting Period, the Ninth Circuit issued its decision
3 in the McCloskey Appeal, rejecting the defendants' claim to a definitive right to
4 arbitration, but remanding the matter to this Court for further proceedings on the
5 question of arbitrability in the receivership and fraudulent transfer context.
6 Thereafter, including just after the close of the Reporting Period, the Receiver and
7 the defendants in the McCloskey Action negotiated a settlement of the Receiver's
8 claims, which settlement this Court approved on November 9, 2023 (see ECF
9 No. 274). Once performed, the settlement will result in the Receiver's recovery of
10 over half a million additional dollars for the benefit of the Estate.

11 (b) *Winkler v. Nicholson*, Case No. 2:21-cv-07458-FMO-
12 AFM (the "Nicholson Action").

13 In the Nicholson Action, the Receiver calculated the defendant's profits to be
14 more than \$1.5 million. Due to a health-related emergency, a status conference
15 originally scheduled for April 20, 2023 was held on September 12, 2023. At the
16 status conference, the Court instructed the parties to re-file their competing motions
17 for summary judgment, which had previously been denied, without prejudice, in
18 anticipation of renewed settlement discussions. Since then, the parties have re-filed
19 their competing motions, and are presently engaged in what the Receiver believes to
20 be substantive and productive discussions to develop mutually agreeable settlement
21 terms.

22 (c) *Winkler v. Grimm, et al.*, Case No. 2:22-cv-05736-FMO-
23 AFM (the "Grimm Action").

24 In the Grimm Action, the Receiver calculated the defendants' profits to be in
25 excess of \$1.1 million. During the Reporting Period, the Receiver attended to
26 numerous outstanding discovery obligations in the Grimm Action and prepared his
27 motion for summary judgment, which was filed in September 2023. In addition, and
28 in the wake of the submission of the parties' competing motions for summary

1 judgment, the Receiver and the defendants in the Grimm Action continued
2 settlement discussions, culminating in an agreement reached after the close of the
3 Reporting Period to undertake settlement discussions before this Court via a second
4 settlement conference before a Magistrate Judge. The settlement conference is
5 expected to occur on or before January 12, 2024.

6 **C. Attending to Pre-Receivership Litigation Matters.**

7 At the time of the Receiver's appointment, the action captioned as *Dennis v.*
8 *Iannelli, et al.* and bearing Case No. 18CV03317 (the "Dennis Action") was pending
9 before the Superior Court of California, County of Santa Barbara. Pursuant to the
10 Permanent Injunction, the Dennis Action was stayed. The Receiver and his counsel
11 have continued to monitor the Dennis Action and have previously informed the
12 court presiding over that action of the litigation stay imposed by the Appointment
13 Order and maintained by the Permanent Injunction, in order to protect and preserve
14 the Estate from diminution. During the Reporting Period, the Receiver's counsel
15 attended a status conference and conferred extensively with plaintiff Dennis' counsel
16 regarding the claims in issue.

17 In accordance with his authority under the Appointment Order, the Receiver
18 has preliminarily engaged contingency fee counsel to act as special counsel to the
19 Receiver to prosecute prospective claims arising from the same transactional
20 nucleus of facts underlying the Dennis Action. Should these claims ultimately be
21 prosecuted, they will be prosecuted at no cost to the Estate, and special counsel will
22 be compensated, if at all, exclusively from any recovery on or settlement of such
23 claims. The Receiver will provide an additional update to the Court in his next
24 interim report, or via supplemental report, in the event that he determines to proceed
25 with the prosecution of any claims.

26 **D. Communications with Investors and Other Interested Parties.**

27 In accordance with the Order in Aid, the Receiver continues to maintain a
28 receivership website for this matter, which, among other things, he uses as a means

1 of communicating with investors in the Receivership Entities. Specifically, the
2 Receiver posts all of his filings to the website, which also includes a portal through
3 which investors and other interested parties may register to receive email notice of
4 such filings. The Receiver will continue to post additional updates to the website as
5 they become relevant and available. Additionally, the Receiver and his staff
6 respond to investor inquiries when such inquiries are made.

7 **E. Preparing for a Second Interim Distribution on Allowed Claims.**

8 As reflected in certain of the Receiver's prior interim reports, the Receiver has
9 intended for some time to make a second interim distribution on allowed claims
10 against the Estate, provided sufficient funds were available. As of the date of this
11 Report, and given the Receiver's litigation and other Asset recovery successes, the
12 Receiver has determined that it is now possible and appropriate to make a second
13 interim distribution to holders of allowed claims, in accordance with the procedures
14 and methods approved by this Court in its April 19, 2022 *Order Granting Motion of*
15 *Receiver, Geoff Winkler, for Order: (1) Approving Proposed Distribution Plan;*
16 *(2) Approving Recommended Treatment of Claims; and (3) Authorizing*
17 *Distributions on Allowed Claims* (ECF No. 234). Accordingly, on or before
18 December 31, 2023, the Receiver anticipates making a distribution in the aggregate
19 amount of at least another \$2 million, over and above the millions already
20 distributed to holders of allowed claims. The Receiver further anticipates making a
21 third, and likely final, distribution concurrently with the wind-down and termination
22 of the instant receivership.

23 **IV. CONCLUSION AND PETITION FOR FURTHER INSTRUCTIONS**

24 Assuming that the Court accepts this Report and authorizes the Receiver to
25 undertake the actions recommended herein, as well as to continue those actions
26 provided for in the Appointment Order, Order in Aid, and Permanent Injunction, the
27 Receiver proposes to submit a further interim report to this Court, addressing his
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1 progress, findings, conclusions, and additional recommendations, in approximately
2 90 to 120 days.

3 Accordingly, and based on the foregoing, the Receiver respectfully requests
4 that the Court enter an order:

- 5 1. Accepting this Report;
- 6 2. Authorizing the Receiver to continue to administer the Receivership
7 Entities and their Estate in accordance with the terms of the Appointment Order,
8 Order in Aid, and Permanent Injunction;
- 9 3. Authorizing the Receiver to undertake the recommendations presented
10 herein; and
- 11 4. Providing such other and further relief as the Court deems necessary
12 and appropriate under the circumstances.

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14 Dated: December 21, 2023

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

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17 By: /s/ Matthew D. Pham

MATTHEW D. PHAM
Attorneys for Receiver
GEOFF WINKLER

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EXHIBIT 1

STANDARDIZED FUND ACCOUNTING REPORT for SEC v. Essex Capital Corporation

Receivership; Civil Docket No. 18-cv-05008-FMO-AFM

Reporting Period from 01/01/2023 to 03/31/2023

FUND ACCOUNTING (See instructions)				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 07/01/2023):	\$ 2,194,664.18		
	Increases in Fund Balance:			
Line 2	Business Income	\$ -		
Line 3	Cash and Securities (in transit)	-		
Line 4	Interest/Dividend Income	9,702.88		
Line 5	Business Asset Liquidation	1,506,925.00		
Line 6	Personal Asset Liquidation	-		
Line 7	Third-Party Litigation Income	100,000.00		
Line 8	Miscellaneous - Uncleared	-		
	Total Funds Available (Lines 1 - 8):		\$ 1,616,627.88	\$ 3,811,292.06
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	-		
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	-		
Line 10b	Business Asset Expenses	-		
Line 10c	Personal Asset Expenses	-		
Line 10d	Investment Expenses	-		
Line 10e	Third-Party Litigation Expenses	-		
	1. Attorney Fees	\$ -		
	2. Litigation Expenses	-		
	Total Disbursements for Receivership Operations		\$ -	
Line 10f	Tax Administrator Fees and Bonds		-	
Line 10g	Federal and State Tax Payments		-	
	Total Disbursements for Receivership Operations			\$ -
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....	\$ -		
	Independent Distribution Consultant (IDC).....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisers.....	-		
	Tax Advisers.....	-		
	2. Administrative Expenses	-		
	3. Miscellaneous	-		
	Total Plan Development Expenses		\$ -	
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....	-		
	IDC.....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisers.....	-		
	Tax Advisers.....	-		
	2. Administrative Expenses	-		
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....	-		
	Claimant Identification.....	-		
	Claims Processing.....	-		
	Web Site Maintenance/Call Center.....	-		
	4. Fund Administrator Bond	-		
	5. Miscellaneous	-		
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses	-		
	Total Plan Implementation Expenses		\$ -	
	Total Disbursements for Distribution Expenses Paid by the Fund			\$ -
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees	\$ -		
Line 12b	Federal Tax Payments	-		
	Total Disbursements to Court/Other:		\$ -	
	Total Funds Disbursed (Lines 9 - 11):			\$ -
Line 13	Ending Balance as of 09/30/2023			\$ 3,811,292.06
Line 14	Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents		3,811,292.06	
Line 14b	Investments		1,650,000.00	
Line 14c	Other Assets or Uncleared Funds		1,615,000.00	
	Total Ending Balance of Fund - Net Assets			\$ 7,076,292.06

STANDARDIZED FUND ACCOUNTING REPORT for SEC v. Essex Capital Corporation

Receivership; Civil Docket No. 18-cv-05008-FMO-AFM

Reporting Period from 01/01/2023 to 03/31/2023

OTHER SUPPLEMENTAL INFORMATION:		Detail	Subtotal	Grand Total
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
<i>Line 15a</i>	<i>Plan Development Expenses Not Paid by the Fund</i>			
	1. Fees:			
	Fund Administrator	\$ -		
	IDC	-		
	Distribution Agent	-		
	Consultants	-		
	Legal Advisers	-		
	Tax Advisers	-		
	2. Administrative Expenses	-		
	3. Miscellaneous	-		
	<i>Total Plan Development Expenses Not Paid by the Fund</i>		\$ -	
<i>Line 15b</i>	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator	\$ -		
	IDC	-		
	Distribution Agent	-		
	Consultants	-		
	Legal Advisers	-		
	Tax Advisers	-		
	2. Administrative Expenses	-		
	3. Investor Identification:			
	Notice/Publishing Approved Plan	-		
	Claimant Identification	-		
	Claims Processing	-		
	Web Site Maintenance/Call Center	-		
	4. Fund Administrator Bond	-		
	5. Miscellaneous	-		
	6. FAIR Reporting Expenses	-		
	<i>Total Plan Implementation Expenses Not Paid by the Fund</i>		\$ -	
<i>Line 15c</i>	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	Disbursements to Court/Other Not Paid by the Fund			
<i>Line 16a</i>	<i>Investment Expenses/CRIS Fees</i>		\$ -	
<i>Line 16b</i>	<i>Federal Tax Payments</i>		-	
	Total Disbursements to Court/Other Not Paid by the Fund:			\$ -
Line 17	DC & State Tax Payments			\$ -
Line 18	No. of Claims:			
<i>Line 18a</i>	<i># of Claims Received This Reporting Period</i>	0		
<i>Line 18b</i>	<i># of Claims Received Since Inception of Fund</i>	75		
Line 19	No. of Claimants/Investors:			
<i>Line 19a</i>	<i># of Claimants/Investors Paid This Reporting Period</i>	0		
<i>Line 19b</i>	<i># of Claimants/Investors Paid Since Inception of Fund</i>	64		

Receiver: **Geoff Winkler**

By: 

Geoff Winkler
(printed name)

Chief Executive Officer
American Fiduciary Services LLC
Receiver, Essex Capital Corporation, et al.

Date: **October 31, 2023**