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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-AJR_x

RECEIVER'S EIGHTEENTH INTERIM
REPORT AND PETITION FOR
FURTHER INSTRUCTIONS

Date: April 25, 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 Eighteenth Interim Report and Petition for Further Instructions (the
"Report") for the period from October 1, 2023 through December 31, 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 *Seventeenth Interim Report and Petition for*
9 *Further Instructions* (ECF No. 275), 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 two (2) 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 millions of dollars in fictitious profits received by those investors. In
21 addition, during the Reporting Period, the Receiver secured Court approval
22 of a settlement in a previously outstanding disgorgement action, resulting in
23 the Estate's recovery of over half a million dollars;
- 24 • Conducted his ongoing evaluation of the Estate's largest remaining equity
25 investment – its ownership in the business enterprise commonly known as
26 915 Elm Avenue CVL, LLC ("CVL") – including in connection with
27 prospective disposition plans aimed at generating significant additional
28 monetary recoveries for the Estate;

- 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;
- 6 • Engaged special litigation counsel to investigate and potentially prosecute
- 7 non-investor, third party claims, on a contingency basis at no cost to the
- 8 Estate; and
- 9 • Continued his accounting efforts in connection with an anticipated third and
- 10 final distributions of holders of allowed claims against the Estate, to be made
- 11 concurrently with the wind-down and termination of the instant receivership.

12 In addition to the above, the Receiver has continued to administer the
13 remaining Assets of the Estate, and, as of the date of his most recent standardized
14 fund accounting report for the (the "SFAR"), attached hereto as **Exhibit 1**, held
15 approximately \$2.385 million for the administration and benefit of the Receivership
16 Entities and the Estate, in addition to other investment Assets and unliquidated
17 claims, after recently completing a second interim, \$2 million distribution to holders
18 of allowed claims (bringing the total distributed to \$5 million).

19 **II. RELEVANT PROCEDURAL HISTORY**

20 While the relevant filings in the instant receivership are too voluminous to
21 list, the Receiver invites the Court and all interested parties to review the following
22 filings² for the relevant factual and procedural background relating to the subjects
23 addressed in this Report:

- 24 • Plaintiff the Securities and Exchange Commission's *Complaint*, filed on
- 25 June 5, 2018 (ECF No. 1);
- 26 • The Appointment Order, entered on December 21, 2018 (ECF No. 66);

27
28 ² These filings, as well as others, are available on the Receiver's website,
<https://essex-receivership.com/>.

- 1 • The Order in Aid, entered on February 1, 2019 (ECF No. 69);
- 2 • The Permanent Injunction, entered on September 9, 2019 (ECF No. 113);
- 3 • The Receiver's prior interim reports (ECF Nos. 78, 103, 123, 149, 174, 197,
- 4 206, 210, 215, 229, 236, 243, 249, 256, 262, and 268);
- 5 • The *Stipulation for Order: (1) Establishing Claims Procedures; and*
- 6 *(2) Setting Claims Bar Date*, filed on April 20, 2020 (ECF No. 168) and the
- 7 order thereon, entered on July 31, 2020 (ECF No. 179);
- 8 • The *Motion of Receiver, Geoff Winkler, for Authority to Establish*
- 9 *Disgorgement Procedures and Undertake Disgorgement Efforts*, filed on
- 10 October 13, 2020 (ECF No. 190) and the order thereon, entered on
- 11 November 12, 2020 (ECF No. 195);
- 12 • The *Motion for Order: (1) Approving Proposed Distribution Plan;*
- 13 *(2) Approving Recommended Treatment of Claims; and (3) Authorizing*
- 14 *Distributions on Allowed Claims*, filed on December 21, 2021 (ECF
- 15 No. 220) and the order thereon, entered on April 19, 2022 (ECF No. 234);
- 16 • The *Motion of Receiver, Geoff Winkler, for Order Approving and*
- 17 *Authorizing Performance of Settlement Agreement*, filed on September 7,
- 18 2022 (ECF No. 241) and the order thereon, entered on September 19, 2022,
- 19 (ECF No. 246);
- 20 • *The Stipulation for Order Approving Settlement Agreement*, filed on
- 21 November 9, 2023 (ECF No. 273), and the order thereon, entered the same
- 22 day (ECF No. 274); and
- 23 • The *Notice of Appearance* of the Receiver's special litigation counsel,
- 24 Thomas G. Foley, filed on January 23, 2024 (ECF No. 281), and the
- 25 subsequent January 25, 2024 *Motion for Relief from Litigation Stay* (ECF
- 26 No. 282) and February 15, 2024 order thereon (ECF No. 284).
- 27
- 28

1 **III. THE RECEIVER'S ACTIVITIES AND EFFORTS DURING THE**
2 **REPORTING PERIOD**

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

8 **A. Assets Held by Receivership.**

9 As reflected in his most recent SFAR, attached hereto as **Exhibit 1**, the
10 Receiver holds a total of just under \$2.4 million, in cash or cash equivalents, for the
11 administration and benefit of the Receivership Entities. In addition, he continues to
12 hold and administer non-cash Assets, along with outstanding and contingent third-
13 party disgorgement claims.

14 In accordance with his authority under the Appointment Order and Permanent
15 Injunction, along with certain other orders of the Court, during the Reporting Period,
16 the Receiver undertook efforts to determine the present and anticipated value of the
17 Estate's CVL ownership interest, and to refine his prospective alternatives for
18 disposition of the CVL interest. As reflected in the Receiver's prior submissions to
19 this Court on this matter, the Receiver anticipates selling the CVL interest prior to
20 the close of the receivership in order to generate additional funds for the Estate.

21 In addition, during the Reporting period, the Receiver recovered \$100,000 via
22 a settlement with a third party arising from a prospective disgorgement claim, and
23 successfully sold a small partnership interest held by the Entities, in accordance with
24 a prior Court order. The Receiver remains in discussions with parties interested in
25 purchasing certain remaining Assets, and is presently in the process of negotiating
26 the sales of those Assets, which he believes will result in additional recoveries, in
27 the low six-figures.

28

1 **B. Recovery of Receivership Assets.**

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

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

14 The Receiver and the defendants in the McCloskey Action have negotiated a
15 settlement of the Receiver's claims, which settlement this Court approved on
16 November 9, 2023 (see ECF No. 274). The settlement has been paid, resulting in
17 the recovery of over half a million dollars for the benefit of the Estate.

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

20 In the Nicholson Action, the Receiver initially calculated the defendant's
21 profits to be approximately \$1.5 million. Due to a health-related emergency, all
22 trial-related deadlines in this matter have been temporarily vacated. At the Court's
23 instruction, the parties have re-filed their competing motions, but remain engaged in
24 periodic discussions in the hopes of reaching appropriate settlement terms.

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

27 In the Grimm Action, the Receiver initially calculated the defendants' profits
28 to be approximately \$1.1 million. During the Reporting Period, the Receiver

1 attended to numerous outstanding discovery obligations in the Grimm Action and
2 prepared his motion for summary judgment, which was filed in September 2023. In
3 addition, and in the wake of the submission of the parties' competing motions for
4 summary judgment, the Receiver and the defendants in the Grimm Action continued
5 settlement discussions, culminating in an agreement reached after the close of the
6 Reporting Period to undertake settlement discussions before this Court via a second
7 settlement conference before a Magistrate Judge. The settlement conference is
8 expected to occur on or before January 12, 2024.

9 **C. Attending to Pre-Receivership Litigation Matters And Engagement**
10 **Of Special Litigation Counsel.**

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

22 Indeed, in accordance with his authority under Section XI(D) of the
23 Appointment Order, and conditioned upon the dismissal of Essex from the Dennis
24 Action, with prejudice, the Receiver has engaged attorney Thomas G. Foley as
25 special litigation counsel, on a contingency fee basis, to investigate and, as
26 appropriate, prosecute prospective claims arising from the same transactional
27 nucleus of facts underlying the Dennis Action. Should these claims ultimately be
28 prosecuted, they will be prosecuted at no cost to the Estate, and special litigation

1 counsel will be compensated, if at all, exclusively from any recovery on or
2 settlement of such claims. At present, and based on his discussions with special
3 litigation counsel, the Receiver anticipates that claims will be filed against at least
4 one non-investor third party associated with the Ponzi investment scheme operated
5 through the Receivership Entities.

6 Mr. Foley recently filed a notice of appearance in the above-entitled action, as
7 counsel for the Receiver, in order to obtain relief from the litigation stay imposed
8 pursuant to the Appointment Order and take discovery against Mr. Iannelli. (*See*
9 ECF No. 281.) **For the sake of clarity in the record, the Receiver specifically**
10 **affirms that Mr. Foley is serving only as special litigation counsel to the**
11 **Receiver; he is not receivership counsel in the above-entitled action.** Allen
12 Matkins remains the Receiver's receivership counsel.

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

14 In accordance with the Order in Aid, the Receiver continues to maintain a
15 receivership website for this matter, which, among other things, he uses as a means
16 of communicating with investors in the Receivership Entities. Specifically, the
17 Receiver posts all of his filings to the website, which also includes a portal through
18 which investors and other interested parties may register to receive email notice of
19 such filings. The Receiver will continue to post additional updates to the website as
20 they become relevant and available. Additionally, the Receiver and his staff
21 respond to investor inquiries when such inquiries are made.

22 **E. Completing a Second Interim Distribution on Allowed Claims.**

23 Consistent with his earlier representations to the Court, the Receiver
24 successfully made a second interim distribution of \$2 million on holders of
25 previously allowed claims against the Estate. **Inclusive of his first interim**
26 **distribution, the Receiver has now made distributions in the aggregate amount**
27 **of \$5 million to holders of allowed claims, primarily investor victims of the**
28 **Ponzi scheme operated through the Receivership Entities.**

1 **F. Preparing for a Contemplated Distribution on Allowed Claims.**

2 As reflected in certain of the Receiver's prior interim reports, the Receiver
3 final distribution on allowed claims against the Estate at the conclusion of the
4 receivership, provided sufficient funds remain available. Based on his recoveries
5 during the Reporting Period, and the recoveries he anticipates securing in the near
6 future, the Receiver continues to anticipate making a third, final distribution
7 concurrently with the wind-down and termination of the instant receivership.

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

9 Assuming that the Court accepts this Report and authorizes the Receiver to
10 undertake the actions recommended herein, as well as to continue those actions
11 provided for in the Appointment Order, Order in Aid, and Permanent Injunction, the
12 Receiver proposes to submit a further interim report to this Court, addressing his
13 progress, findings, conclusions, and additional recommendations, in approximately
14 90 to 120 days.

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

- 17 1. Accepting this Report;
- 18 2. Authorizing the Receiver to continue to administer the Receivership
19 Entities and their Estate in accordance with the terms of the Appointment Order,
20 Order in Aid, and Permanent Injunction;
- 21 3. Authorizing the Receiver to undertake the recommendations presented
22 herein; and

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1 4. Providing such other and further relief as the Court deems necessary
2 and appropriate under the circumstances.

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Dated: March 26, 2023

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

By: /s/ Matthew D. Pham

MATTHEW D. PHAM
Attorneys for Receiver
GEOFF WINKLER

EXHIBIT 1

STANDARDIZED FUND ACCOUNTING REPORT for SEC v. Essex Capital Corporation

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

Reporting Period from 10/01/2023 to 12/31/2023

FUND ACCOUNTING (See instructions)				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 10/01/2023):	\$ 3,811,292.06		
	Increases in Fund Balance:			
Line 2	Business Income	\$ -		
Line 3	Cash and Securities (in transit)	-		
Line 4	Interest/Dividend Income	12,127.06		
Line 5	Business Asset Liquidation	47,122.00		
Line 6	Personal Asset Liquidation	-		
Line 7	Third-Party Litigation Income	625,000.00		
Line 8	Miscellaneous			
	Total Funds Available (Lines 1 - 8):		\$ 684,249.06	\$ 4,495,541.12
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	(2,000,091.00)		
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	(109,827.19)		
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		\$ (2,109,918.19)	
Line 10f	Tax Administrator Fees and Bonds		-	
Line 10g	Federal and State Tax Payments		-	
	Total Disbursements for Receivership Operations			\$ (2,109,918.19)
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):			\$ (2,109,918.19)
Line 13	Ending Balance as of 12/31/2023			\$ 2,385,622.93
Line 14	Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents		2,385,622.93	
Line 14b	Investments		1,480,000.00	
Line 14c	Other Assets or Uncleared Funds		1,090,000.00	
	Total Ending Balance of Fund - Net Assets			\$ 4,955,622.93

STANDARDIZED FUND ACCOUNTING REPORT for SEC v. Essex Capital Corporation

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

Reporting Period from 10/01/2023 to 12/31/2023

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>	# of Claims Received This Reporting Period	0		
<i>Line 18b</i>	# of Claims Received Since Inception of Fund	75		
Line 19	No. of Claimants/Investors:			
<i>Line 19a</i>	# of Claimants/Investors Paid This Reporting Period	60		
<i>Line 19b</i>	# of Claimants/Investors Paid Since Inception of Fund	64		

Receiver: Geoff Winkler

By: 

Geoff Winkler
(printed name)

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

Date: January 31, 2024