DAVID R. ZARO (BAR NO. 124334)
JOSHUA A. DEL CASTILLO (BAR NO. 239015)
MATTHEW D. PHAM (BAR NO. 287704)
ALPHAMORLAI L. KEBEH (BAR NO. 336798)
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
Phone: (213) 622-5555
Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
jdelcastillo@allenmatkins.com
mpham@allenmatkins.com
mkebeh@allenmatkins.com

Attorneys for Receiver
GEOFF WINKLER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. RALPH T. IANNELLI and ESSEX CAPITAL CORP., Defendants.	Case No. 2:18-cv-05008-FMO-AJRx **DECLARATION OF JOSHUA A. DEL CASTILLO IN SUPPORT OF OPPOSITION OF RECEIVER TO MOTION TO CLARIFY, MODIFY, OR GRANT RELIEF FROM RECEIVERSHIP INJUNCTION; AND, TO INTERVENE OF PROPOSED INTERVENOR, JIM GALLY** [Opposition to Motion and Declaration of Geoff Winkler submitted concurrently herewith] Date: July 24, 2025 Time: 10:00 a.m. Ctrm: 6D Judge Hon. Fernando M. Olguin

DECLARATION OF JOSHUA A. DEL CASTILLO

I, Joshua A. del Castillo, declare as follows:

1. I am an attorney at the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, counsel of record for Geoff Winkler, the Court-appointed receiver (the "Receiver") in the above-entitled action. I make this Declaration in support of the Receiver's Opposition to the proposed intervenor, Jim Gally's, *Motion to Clarify, Modify or Grant Relief from Receivership Injunction; and, to Intervene* (the "Motion", ECF No. 314, *et seq.*). I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Over the course of the receivership pending in the above-entitled action, my office has been contacted periodically by proposed intervenor, Jim Gally, who has requested updates on administrative matters, often relating to the timing of anticipated distribution payments from the Receiver. During such contacts, I and my colleagues have consistently endeavored to provide Mr. Gally with the requested updates, but have also observed a policy of affirming to Mr. Gally that neither the Receiver nor his counsel can provide him with legal advice. Mr. Gally's direct outreach to my firm continued even after he engaged attorney Patrick C. Bageant as his counsel, in December 2023. I and my colleagues counsel consistently responded to such outreach by advising Mr. Gally that we could not speak to him directly, absent permission from counsel, and requesting that all communications be directed through his counsel.

3. On or around December 1, 2023, my office received written correspondence from attorney Patrick C. Bageant, a true and correct copy of which is attached hereto as **Exhibit A**. Attorney Bageant's correspondence included claims similar to those presented in the Motion, including the allegation that Essex Capital Corporation ("Essex"), an entity now under the Receiver's authority and

control, did not make payment on a $1,500,000 promissory note (the "Essex Note") owed to Mr. Gally. Via this correspondence, and in connection with this alleged debt, attorney Bageant requested to meet and confer regarding Mr. Gally's stated intention to seek relief from the injunction entered in the above-entitled action, in order to commence litigation.

4. After receiving attorney Bageant's correspondence, I met and conferred with him, by telephone. During this conversation, I endeavored to provide attorney Bageant with an overview of the claims process undertaken by the Receiver, the fact that this Court had allowed Mr. Gally's claim for repayment of the debt owed by Essex, and the fact that the Receiver had already commenced making distributions to Mr. Gally on his allowed claim. At no time during our brief telephonic conversation did I presume to direct attorney Bageant – or, by implication, his client, Mr. Gally – to take or refrain from taking any action, nor did I engage in a detailed substantive discussion of the merits of any causes of action proposed by Mr. Gally; I merely expressed the Receiver's perspective on the issues presented.

5. More than a year after my telephone call with attorney Bageant, on April 7, 2025, my office received written correspondence from attorney Michael P. Denver, again seeking to meet and confer in connection with Mr. Gally's contemplated litigation. A true and correct copy of attorney Denver's correspondence is attached hereto as **Exhibit B**. Notably, attorney Denver's correspondence not only advised of Mr. Gally's intent to intervene in the above-entitled action in order to pursue claims against 915 Elm Avenue CVL, LLC ("CVL"), an entity in which the Receiver holds an interest for the benefit of the receivership estate, it included a detailed recitation of the factual and legal grounds upon which Mr. Gally's threatened course of action relied. Attorney Denver's correspondence included what were perceived to be misplaced accusations against the Receiver and inaccurate statements of fact and law, and it did not appear to acknowledge that Mr. Gally's claim for damages arose exclusively from Essex's

breach of the Essex Note, nor that Mr. Gally's claim had been adjudicated by this Court, in his favor, three years earlier.

6. In response to his correspondence, on April 10, 2025, I transmitted a letter to attorney Denver, a true and correct copy of which is attached hereto as **Exhibit C**. In this letter, I sought to correct the record and address, in greater detail, what the Receiver believed to be the factual basis for Mr. Gally's claim, the procedural history of its submission and conclusive adjudication by this Court, and the completed and anticipated distributions made to Mr. Gally in accordance with this Court's prior orders. After later speaking to attorney Denver by telephone, I also provided him by email with a copy of the Receiver's instructions for the submission of claims, along with a copy of Mr. Gally's signed claim determination letter, pursuant to which Mr. Gally consented to the Receiver's calculation of his claim. True and correct copies of these materials are attached hereto as **Exhibits D**, and **E**, respectively.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2025, at Los Angeles, California.

Joshua A. del Castillo

EXHIBIT A

HOLLYSTONE
LAW

Patrick C. Bageant
1775 W. State St., No. 286
Boise, Idaho 83702
P. 208.596.5343; F. 208.686.8247
pbageant@hollystonelaw.com
www.hollystonelaw.com

December 1, 2023

Via email: dzaro@allenmatkins.com
jdelcastillo@allenmatkins.com
abc@cappellonoel.com
dcousineau@cappellonoel.com

David R. Zaro
Joshua A. del Castillo
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Suite 2800
Los Angeles, California 90017

A. Barry Cappello
David L. Cousineau
Cappello & Noël LLP
831 State Street
Santa Barbara, CA 93101

RE: Outstanding Obligations of 915 Elm CVL, LLC.

Dear Messrs. Zaro, Castillo, Cappello & Cousineau:

I represent Mr. James Gally, Carpinteria Valley Lumber Co., and J&G Properties, LLC.

On January 15, 2016, 915 Elm Avenue CVL, LLC ("915 Elm") entered a purchase and sale agreement for a lumber, hardware, and garden supply business located at 915 Elm Avenue in Carpinteria, California (collectively, the "Lumber Yard"), which my clients owned.

Pursuant to the agreement, 915 Elm was to pay $4,175,000 in return for full title to the business and associated real estate. The consideration due from 915 Elm comprised two cash payments totaling $2,675,000 and an additional $1,500,000 in the form of a note from Essex, LLC (the "Essex Note").

My clients did transfer the Lumber Yard pursuant to the purchase and sale agreement. However, 915 Elm did not make full payment in return. Specifically, my clients did not receive the $1,500,000 due to them under the Essex Note. As a result, they have not received the consideration due to them under the purchase and sale agreement.

As you know very well, soon after 915 Elm's breach, Essex Capital Corporation was placed in receivership and claims against 915 Elm were frozen in case number 2:18-cv-05008 in the United States District Court for the Central District of California. However, 915 Elm remains subject to its duty to pay pursuant to the purchase and sale agreement, without regard to whether it may have delegated portions of that duty to Essex Capital Corporation or its principal.

Consequently, we intend to either negotiate resolution with you or request that the Court in *SEC v. Iannelli et al.*, No. 2:18-cv-05008 in the United States District Court for the Central District of California, lift its stay with regard to my clients' claim so that we may pursue it in California Superior Court.

This letter is to alert you to that claim and to request a conference with you by no later than December 8, 2023.

Sincerely,

Patrick Bageant
Owner

EXHIBIT B

DENVER LAW GROUP

514 West Pueblo Street, 1st Floor
Santa Barbara, CA 93105
mdenver@denverlawgroup.law

March 7, 2025

SENT VIA EMAIL

Mr. David R. Zaro, dzaro@allenmatkins.com
Mr. Joshua A. del Castillo, jdelcastillo@allenmatkins.com
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Ste. 2800
Los Angeles, CA 90017

A. Barry Cappello, abc@cappellonoel.com
David L. Cousineau, dcousineau@cappellonoel.com
Cappello & Noel LLP
831 State Street
Santa Barbara, CA 93101

RE: Gally v. CVL, LLC (to be filed)
SEC v. Ianelli, et al., Central Dist. CA Case No. 2:18-CV-05008

Dear Messrs. Zaro, del Castillo, Cappello & Cousineau:

The undersigned represents Jim Gally ("Gally") who plans to move the Court in the above-noted Receivership action (i) for relief from the Receivership Injunction to file litigation against 915 ELM AVENUE CVL, LLC ("CVL") and (ii) to intervene as a party pursuant to Federal Rule of Civil Procedure 24. Gally seeks relief from the Stay and to intervene to protect his interests that the Securities and Exchange Commission ("SEC"), Essex Capital Corporation ("Essex"), Ralph Iannelli ("Iannelli") and CVL (collectively, the "Parties") have placed at issue in the Receivership proceeding.

Specifically, Gally sold his lumberyard property and business in Carpinteria, CA (the "Lumberyard") to CVL, in which Iannelli and another person named William Reyner were LLC Members. Soon thereafter, the Iannelli and Essex Ponzi scheme was exposed. CVL failed to pay the full Lumberyard purchase price to Gally. Gally holds claims against CVL, including for fraud, which Gally seeks to pursue, but presently cannot due to the Receivership Injunction.

It appears that Essex and Iannelli jointly misrepresented to the Court that Iannelli was the "Listed Owner" of the Lumberyard when they knew that CVL was the listed owner. As a result, the

Receivership Injunction improperly froze the Lumberyard. The actual Listed Owner of the Property, CVL, a non-Receivership entity that remains stand-alone, moved to remove the freeze on the Lumberyard. Subsequently, Essex, Iannelli and CVL entered into a settlement agreement to resolve the dispute over the Lumberyard which remains in the possession of CVL.

The Receiver for Iannelli/Essex has stated his intent to liquidate the Lumberyard and use sale proceeds to pay himself and to partially pay net losers in the Essex Ponzi scheme, which does not include Gally. The Receiver's plan to treat the Lumberyard, which is in CVL's possession, as a Receivership asset is unlawful and will improperly deprive Gally of his rights to sue CVL for rescission based on fraud, or alternatively, to recover Lumberyard-sale damages. Moreover, CVL and its Members (including the Receiver) seek to profit off the Lumberyard knowing full well that Gally was never paid the full purchase price. Gally will request that the Court stop the Receiver from executing his unlawful and inequitable plan so that Gally can pursue his rights arising out of CVL's fraudulent purchase of the Lumberyard.

Gally will move the Court: for relief from the Injunction so Gally may sue CVL to protect his Lumberyard sale rights; to intervene so his rights are protected as a party; or alternatively, if Gally is denied the right to sue CVL, Gally will move for an Order directing that the Lumberyard shall not be sold, transferred, or encumbered until such time as Gally has obtained review of such a denial.

Gally previously notified the Receiver and CVL in December 2023 that Gally intended to move the Court to grant Gally relief from the Injunction to sue CVL. Gally met and conferred with the Receiver and CVL at that time.

The below is an outline for the Motion Gally plans to file.

I. GALLY NEEDS RELIEF FROM THE RECEIVERSHIP STAY TO SUE CVL FOR FRAUD & RESCISSION, OR ALTERNATIVELY, FOR DAMAGES - - GALLY SEEKS TO INTERVENE TO PROTECT HIS RIGHTS AS A PARTY

Separate and apart from the Iannelli/Essex Ponzi scheme, Iannelli and Reyner formed and used a single purpose entity, CVL, to purchase the Lumberyard owned by Gally, an innocent business owner who did not invest in the Essex Ponzi scheme. CVL (via at least Iannelli) defrauded Gally into selling his Lumberyard to CVL and did not pay Gally the full purchase price. The Receiver, who holds Iannelli's partial interest in CVL, plans to use the Lumberyard, for which Gally was never fully paid, to fund the Receivership and partially pay investors in the Essex Ponzi scheme, which does not include Gally. The Receiver's plan to ignore CVL's debt to Gally in order to use the Lumberyard to fund the Receivership is unlawful, it is a ratification of CVL's fraud on Gally and it will inequitably re-harm Gally. Gally seeks to sue CVL for fraud to assert rescission to recover his Lumberyard, or alternatively, for damages, including CVL's failure to pay Gally the full Lumberyard purchase price. Gally seeks the requisite relief from the Receivership injunction to sue CVL, even though CVL and the Lumberyard are not assets of the Receivership. Gally also seeks to intervene to allow him to act as a party while getting relief from the Injunction and to protect himself if his rights to sue CVL are denied by seeking review of any such denial before the Lumberyard is improperly liquidated for the benefit of the Receiver and Essex Ponzi investors which does not include Gally.

II. RLEVANT BACKGROUND REGARDING THE ESSEX FRAUD ON PONZI SCHEME INVESTORS, CVL'S SEPARATE FRAUD ON GALLY AND THE RECEIVERSHIP INJUNCTION'S CONFLATION OF THE TWO DISTINCT FRAUDS

Iannelli used his Essex entity run a Ponzi scheme that defrauded dozens of Essex investors. ECF 1, SEC Complaint, at ¶ 4. Receiver Winkler has been appointed by the Court to, among other things, recover the assets of Iannelli and Essex and to use them to partially pay Essex Ponzi investors. ECF 66.

Separate and apart from Iannelli's Essex Ponzi scheme, Iannelli and Reyner formed CVL, for the specific purpose of purchasing the Lumberyard from Gally. ECF 115-3, at ¶ 8. Reyner and Iannelli were both Members in CVL. Id., at ¶ 18. CVL was to pay Gally a total of $4,175,000 in two separate payments of $2,675,000 and $1,500,00. Declaration of Jim Gally in support hereof ("Gally Decl."), ¶ __ and Exh. __ thereto, the Purchase Agreement. CVL paid the initial $2,675,000 to Gally with proceeds from a bank loan and took possession of the Lumberyard, while the second payment of $1,500,000, which was to come from Essex, was never paid. Gally Decl., ¶ __. Iannelli intended to use Essex Ponzi funds to pay the second installment to Gally. ECF 241-__, Winkler Decl., ¶ 2.

Gally did not know Iannelli and Essex were running a Ponzi scheme and if he had, Gally would never have agreed to sell his Lumberyard to CVL. Gally Decl., ¶ __. CVL retains the Lumberyard which remains a going concern. ECF 241 pp. 8-9.

Although neither CVL nor the Lumberyard are "receivership assets," in 2018 the Receiver subjected both CVL and the Lumberyard to an Injunctive freeze. See Order Regarding Permanent Injunction [ECF 113 ("September Order") at 4:7]. The Receiver did so (i) as to CVL by representing to the Court that CVL was an entity "affiliated" with Essex (ECF 125, p.10) and (ii) as to the Lumberyard, by misrepresenting that the Lumberyard was owned by Iannelli, when the Receiver knew that was not true. ECF 115-1 p.11:17-28. The Lumberyard was acquired from Gally, not by Iannelli, but by CVL, as conclusively demonstrated by the deed to the Property. *See* ECF. 115-3, Reyner Decl., at ¶ 8 & Ex. 1. Nonetheless, the Receiver has steadfastly refused to correct his misrepresentation regarding Lumberyard ownership despite the meet and confer process with Gally. *Ibid*. & Decl. Denver ¶ __.

On December 6, 2018, the Receiver submitted a Proposed Order that sought, in part, to place an "immediate freeze" on the Lumberyard and to protect Essex "affiliated entities" such as CVL from litigation. The Court signed the Order on December 21, 2018. ECF 66 ("December Order").

III. THE RECEIVER HOLDS NO CLAIM TO OWNERSHIP OF THE LUMBERYARD OR ANY OTHER CVL ASSET

Essex is not a Member of CVL. *See* ECF 115-3, Reyner Decl. at ¶ 4 (listing members). Although Iannelli was a CVL Member, his interest now held by the Receiver was and remains limited solely to his "membership interests." The law regarding an LLC member's rights, or his/her creditors' rights to LLC assets is clear and well established. A limited liability company is distinct from its members. Cal. Corp. Code § 17701.04(a); Grigoryan v. Experian Info. Solutions, Inc., 84 F.Supp.3d 1044, 1079 (C.D. Cal. 2014). Therefore, members of a limited liability company have no direct ownership in the company's assets. Grigoryan, 84 F.Supp.3d at 1079. Rather, each member's interest is limited to their transferable interest (*i.e.*, right to receive distributions), their right, to the extent provided for in the Operating Agreement, to vote or participate in management, and any rights granted for access to information regarding the company. Cal. Corp. Code § 17701.02(r), (aa). Iannelli's status as a member of CVL gave him no direct ownership over any of CVL's assets. Because CVL's assets are distinct from Iannelli's, CVL's assets are also not available to pay his debts, or those of the Receiver, as Iannelli's successor in LLC membership. Any judgment against Iannelli can be enforced against his transferable interest (right to distributions) in CVL, but the creditor, like Iannelli or any other person to whom he transfers his interests in CVL, cannot interfere with the management and activities of CVL. See Cal Code Civ. P. § 708.310; Cal. Corp. Code §§ 17705.02, 17705.03; La Jolla Bank, FSB v. Tarkanian, 2013 U.S. Dist. LEXIS 97846, *3-4 (E.D. Cal. 2013); Comments to Revised Uniform Limited Liability Company Act (July 6-12, 2013) at 127 (creditor cannot "interfere with the management and activities of the limited liability company"). Therefore, even if the Receiver or someone else obtained Iannelli's membership interests, the transferee receives no right to access CVL's assets, to manage CVL, or to interfere with its business. See Cal. Corp. Code § 17705.02(a)(3)(A) (transfer does not entitle transferee to "vote or otherwise participate in the management or conduct of the activities of a limited liability company."), 17705.03 (court can order charging order against "transferable interest of the judgment creditor," which requires the limited liability company to pay the judgment creditor "any distribution that would otherwise be paid to the judgment debtor.") CVL's assets therefore belong to CVL, not to Iannelli or Essex, the assets should not be protected by the Injunction and the assets cannot be taken by the Receiver to use as his own.

IV. GALLY IS ENTITLED TO RELIEF FROM THE INJUNCTIVE STAY TO SUE CVL

The Ninth Circuit has three factors to consider in deciding whether to lift a receivership stay: "(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim." SEC v. Universal Financial, 760 F.2d 1034, 1038 (9th Cir. 1985).

A. Denying Gally Relief from the Injunction Will Not Genuinely Preserve the Status Quo of the Receivership Res, but it Will Cause Gally to Suffer Substantial Irreparable Injury

When considering a request for relief from a Receivership Injunction or stay, the Ninth Circuit requires the Court to balance the interest of the receiver and also the moving party: "[T]he interests of the Receiver are very broad and include not only protection of the receivership res, but also protection of defrauded investors and considerations of judicial economy." SEC v. Universal Financial, 760 F.2d 1034, 1038 (9th Cir. 1985).

First, as to the status quo of the Receivership res, Winkler was appointed Receiver for Essex, not CVL. CVL is not an entity in Receivership. CVL was not used to defraud investors in the Essex Ponzi scheme. CVL was formed specifically to purchase Lumberyard from Gally. While Receiver Winkler holds Ianelli's partial interest in CVL, he does not and cannot hold any legitimate ownership interest in CVL assets, such as CVL's cash, or the Lumberyard CVL defrauded Gally out of. While Receiver's partial interest in CVL may be part of the Receivership res, the Lumberyard taken by non-Receivership entity CVL is not part of the legitimate Receivership res. Allowing Gally to sue to CVL to recover his Lumberyard, or damages arising from its sale to CVL will not disturb the status quo of the legitimate Receivership res.

Second, as to substantial harm to Gally: Gally did not invest in the Essex Ponzi scheme; his property was taken by fraud; and CVL never fully paid for it. The Lumberyard should not be used to pay the Essex Receiver and Essex investors. The Receiver's plan to ignore CVL's legal debt to Gally while hiding behind the Receivership Injunction will substantially and irreparably harm Gally.

B. Now is the Appropriate Time to Grant Gally Relief from the Injunction

"Where the motion for relief from the stay is made soon after the receiver has assumed control over the estate, the receiver's need to organize and understand the entities under his control may weigh more heavily than the merits of the party's claim. As the receivership progresses, however, it may be less plausible for the receiver to contend that he needs more time to explore the affairs of the entities. The merits of the moving party's claim may then loom larger in the balance." SEC v. Wencke, 622 F.2d 1363, 1374 (9th Cir. 1980); SEC v. Universal Financial, 760 F.2d 1034, 1038 (9th Cir. 1985). The cases are significant by what they mean by "early in the case." When the Ninth Circuit heard the original Wencke case, the receivership had been pending for two years. The Court denied relief from stay and sent the matter back to the District Court to reexamine the necessity for the stay. Upon remand, the District Court continued the stay in effect and the movant again appealed. When the Ninth Circuit heard the Wencke case again, the receivership had been pending for six years. The Ninth Circuit felt that was long enough and, therefore, lifted the stay.

Here, the Stay or Injunction has been in effect for well over 6 years. The Receiver has already stipulated to lifting the stay as to other litigants. ECF 163. He articulated his grasp of CVL Lumberyard-related issues when he moved to settle Lumberyard dispute with the other CVL Member (ECF 241) which motion was granted. Based on Receiver's prior actions is it clear that relief from the Injunction for Gally to sue CVL is appropriate at this stage in the case.

C. Gally Holds a Meritorious Claim for Rescission or Damages Based on CVL's Fraud

Gally's claim that CVL defrauded him into selling his Lumberyard is a proper basis on which to seek rescission. Cal.Civ.Code Sec. 1689. The Court should not weigh the merits of Gally's effort to rescind, or alternatively to recover damages for, among other things, the unpaid purchase price, but rather the Court should only consider whether Galley's claim is colorable. SEC v. Wencke, 742 F.2d 1230, 1232 (9th Cir. 1984); US v. Acorn Tech Fund, L.P., 429 F.3d 438, 444 (3rd. Cir. 2005). Here, Gally contracted to sell his Lumberyard to CVL, with the majority of funds paid up front and another payment slightly deferred. The Receiver states the second installment to be paid by CVL to Gally was to come from Iannelli's intended diversion of Essex Ponzi money. ECF 241, p.4:6-20. Gally did not know that Essex was a Ponzi scheme, or that the CVL intended to pay Gally $1M in stolen money. Gally Decl. ¶___. Iannelli and CVL concealed from Gally the intent to pay Gally with Ponzi funds which Gally would never have accepted. Ibid. That CVL did not actually pay the second installment to Gally does not undercut the colorable nature of Gally's fraud claim as Ianelli's fraudulent intent (even if unrealized) is properly imputed to CVL. Uecker v. Ng (In re Mortgage Fund '08 LLC) (Bankr.N.D.Cal. Aug. 14, 2013, Nos. 11-49803 rle, 12-4099 rle) 2013 Bankr. LEXIS 3385). Likewise, Gally has a colorable claim that CVL damaged Gally by failing to pay the full Lumberyard purchase price.

Gally gave the Receiver notice of his claims in 2023. Gally Decl. ¶___. Gally is prepared to refund the partial purchase money paid by CVL to Gally which funds came from a bank loan, not Ponzi money. Alternatively, Gally seeks relief from the Injunction to sue CVL for damages, including the unpaid portion of the purchase price. Either way, Gally should be granted relief from the stay to sue LLC. Gally should also be allowed to intervene to protect his rights as a party.

V. GALLY SHOULD BE ALLOWED TO INTERVENE

Gally seeks to intervene in this case as a matter of right under Fed. R. Civ. P. 24(a)(2) or, alternatively, permissively under Fed. R. Civ. P. 24(b)(1)(B). Courts broadly construe the requirements for intervention to favor granting intervention to ensure that the proposed intervenor's interests are protected. Southwest Ctr. For Biological Diversity v. Berg, 268 F.3d 810, 818 (9th Cir. 2001 (citing Forest Conservation Council v. United States Forest Serv., 66 F.3d 1489, 1493 (9th Cir. 1995); see also United States v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002).

A. Intervention as of Right

The Ninth Circuit applies a four-part test to assess intervention as a matter of right: (1) the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (2) the application must be timely; (3) the applicant must be so-situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit." Araki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003). Gally satisfies each of these requirements:

(1) Gally has a "significantly protectable" interest at issue in this Receivership action. The test for a "legally protectable" interest in the subject of the dispute is not a "bright-line rule." United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004). A party has a sufficient interest for intervention purposes if it will "suffer a practical impairment of its interest as a result of the pending litigation." Cal.Ex rel. Lockyer v. United States, 450 F.3d 436, 441 (9th Cir. 2006). Gally seeks to rescind based on CVL's fraud while purchasing the Lumberyard. Alternatively, Gally holds a claim for damages, including CVL's refusal to pay the full purchase. If Gally is unable to sue CVL, the Receiver and Reyner will ignore CVL's misconduct toward Gally and use the lumberyard to pay themselves to the unlawful exclusion of Gally. Gally's interests are "legally protectable".

(2) Gally's motion is timely. Timeliness for intervention depends on: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of delay." United States v. Alisal Water Corp., 370 F. 3d 915, 921 (9th Cir. 2004). As stated above, relief from a Receivership Injunction is not appropriate until such time as the Receiver has had sufficient time (measured in years) to work on and understand the estate. Receiver Winkler has reached that point. Accordingly, Gally's motion for relief from the Injunction is neither premature, nor tardy. It is timely. Moreover, as Gally seeks only to protect his interests in the Lumberyard sale and does not seek to alter any prior orders that impact the Parties, there is no conceivable prejudice to any party. Finally, the claims are timely in ters of the statutes of limitation, which were tolled by the Stay. FTC v. Connolly, 2007 U.S. Dist. LEXIS 98446, *10.

(3) Disposition of this action may impair Gally's ability to protect his interests. An intervenor satisfies this requirement if the action may "as a practical matter impair or impede the movant's ability to protect its interest." Cunningham v. David Special Commitment Ctr., 158 F.3d 1035, 1038 (9th Cir. 1998). The movant need only make a "minimal" showing that the representation of its interests by existing parties "may be inadequate." Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003). The Supreme Court has stated that the burden of making a showing of inadequacy should be treated as "minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972). The Receivership Injunction precludes Gally from suing CVL which Gally needs to do to either recover his Lumberyard, or recover damages including the unpaid portion of the Lumberyard purchase price that CVL never paid. If Gally cannot obtain relief from the Injunction (or seek review of a denial for relief) Gally's ability to protect himself will be harmed.

(4) Gally's interests are not adequately represented by the existing parties. Reyner and the Receiver's plan is to profit off the Lumberyard without CVL ever fully paying Gally for it. The Receiver intends to use the Lumberyard to fund the Receivership and partially pay Ponzi investors which excludes Gally. Neither CVL, Reyner, the Receiver or anyone else will advocate for Gally or protect his rights to sue for rescission or to recover damages form CVL. Gally must do it himself. Any decisions from this Court, whether interim or final, could impair Gally's ability to protect his interests, especially where the Court is being asked to make decisions based on incorrect information, such as who actually owns the Lumberyard. Gally is entitled to intervene as of right.

B. Alternatively, Gally is entitled to intervene permissively.

Permissive intervention is appropriate where (1) the moving party has a claim or defense which shares a common question of law or fact with the main action; (2) the motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims. Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998).

(1) Common Question. The existence of a common question is liberally construed in favor of intervention. Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108-1109 (9th Cir. 2002); 7C Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357-63 (3d ed. 1986). This element is satisfied as long as there is a single common question of either fact or law. Meyer Goldberg, Inc., of Lorain v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987). Based on the Injunction and the positions taken by the Receiver, the existing action involves questions related to rightful ownership of the Lumberyard and access to CVL's assets, whether by the Receiver and/or Gally. This nexus is sufficient to satisfy the minimal burden of showing one common question of either law or fact.

(2) Timeliness. As set forth above in the section on Intervention as of Right, Gally's Motion is timely.

(3) Jurisdiction. The SEC's and Receiver's claims to CVL's assets are based on their powers under the federal Securities Act and the Exchange Act. Any attempt by Gally to perfect his claims to assets CVL possesses and clarify the proper scope of the SEC's and Receiver's rights to either preclude Gally or to claim "ownership" over CVL assets does not disturb that jurisdiction.

VI. CONCLUSION

For the foregoing reasons, Gally respectfully requests that the Court allow Gally: to obtain relief from the Injunction so that Gally may sue CVL to protect Gally's rights arising out of the Lumberyard sale; to intervene to ensure his rights are protected; and, if Gally is denied the right to sue CVL, to issue an Order directing that the Lumberyard shall not be sold, transferred or encumbered until such time as Gally has obtained review of such a denial.

VII. REQUEST FOR TELEPHONIC MEET & CONFER

I suggest we speak on the phone to meet and confer on or before April 22nd. Please contact me with times you are free to discuss the foregoing and any other topics we may want to address.

Sincerely,

___________/S/________________
Michael P. Denver

EXHIBIT C

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
865 South Figueroa Street, Suite 2800 | Los Angeles, CA 90017-2543
Telephone: 213.622.5555 | Facsimile: 213.620.8816
www.allenmatkins.com

Joshua A. del Castillo
E-mail: jdelcastillo@allenmatkins.com
Direct Dial: 213.955.5591 File Number: 378224.00002/4904-5951-3396.1

<u>Via Email/U.S. Mail</u>

April 10, 2025

Michael P. Denver, Esq.
Denver Law Group
514 West Pueblo Street, 1st Flr.
Santa Barbara, CA 93105

Re: *SEC v. Iannelli, et al.*, USDC, C.D. Cal. Case No. 2:18-cv-05008-FMO-AFM | Response to Demand Letter re: J. Gally

Dear Mr. Denver:

As you know, this firm represents Geoff Winkler (the "<u>Receiver</u>"), appointed to serve as the receiver for Essex Capital Corporation ("<u>Essex</u>") and its subsidiaries and affiliates by the United States District Court for the Central District of California (the "<u>Court</u>") in the above-referenced Securities and Exchange Commission ("<u>SEC</u>") enforcement action (the "<u>Receivership Case</u>"). I write in response to your correspondence dated March 7, 2025 (but transmitted on April 7, 2025) regarding a request to meet and confer by your client, James Gally, regarding a contemplated motion to intervene in the Receivership Case and anticipated lawsuit against 915 Elm Avenue CVL, LLC ("<u>CVL</u>") – an entity in which the Receiver administers a minority interest for the benefit of the receivership estate – and unspecified affiliated persons or entities.

As reflected in my email of April 7, 2025, your correspondence contains a number of factual and legal inaccuracies, and baselessly accuses the Receiver of acting to benefit himself and victims of the Essex Ponzi scheme, to Mr. Gally's exclusion and detriment. This suggests that the course of action proposed in your correspondence is premised upon a fundamental misunderstanding of the procedural history of the Receivership Case, the CVL interest administered by the Receiver, the Receiver's anticipated sale of that interest for the benefit of the receivership estate, and – perhaps most critically – the fact that the claim for restitution that Mr. Gally proposes to vindicate by way of his planned litigation has already been conclusively adjudicated by the Court in the context of the Receivership Case. Indeed, the claim Mr. Gally submitted in the Receivership Case was recommended by the Receiver (and ultimately approved by the Court as) an allowed, priority claim, in excess of $1 million. Mr. Gally has already begun to receive disbursements from the Receiver pursuant to a Court-approved distribution plan.

As a consequence, and as detailed further below, the Receiver submits that Mr. Gally's demands – and accusations – are unwarranted. He urges Mr. Gally to reconsider a prospective course of action that will do nothing but further deplete the resources of the very receivership estate from which his claim is being paid.

A. Factual Inaccuracies In Your Correspondence.

Your correspondence begins with the assertion that Mr. Gally has been prohibited from commencing litigation against CVL as a consequence of a "Receivership Injunction" (presumably, the asset freeze and injunction against litigation and self-help imposed by the Court in its December 21, 2018 *Order Regarding Preliminary Injunction and Appointment of a Permanent Receiver* [ECF No. 66 and hereafter the "Preliminary Injunction"]), which injunction you claim – without citation – was the result of a deliberate misrepresentation by Essex and its pre-receivership principal, Ralph Iannelli. There appears to be no factual basis for this claim; the Preliminary Injunction was entered on motion by the plaintiff SEC (not the Receiver) and, to the Receiver's knowledge, did not depend upon any affirmative representations by Essex or Mr. Iannelli.

Perhaps more troublingly, you assert that the Receiver has improperly designated the lumberyard business owned by CVL (the "Lumberyard") as a receivership asset, which he plans to "liquidate … and use sale proceeds to pay himself and to partially pay net losers in the Essex Ponzi scheme, which does not include Gally." This assertion is entirely false, and contradicted by numerous documents in the record, to say nothing of the fact that, on the Receiver's recommendation, Mr. Gally's restitution claim was allowed by the Court, in full, in connection with which Mr. Gally has already begun to receive distributions.

By way of just a few additional examples, none of the documents you cite to in support of your assertion – claiming that they reflect improper actions by the Receiver – was filed by the Receiver. First, you claim that "in 2018[,] the Receiver subjected both CVL and the Lumberyard to an Injunctive [*sic*] freeze", citing to the Court's September 9, 2019 *Order Regarding Permanent Injunction* [ECF No. 113]. This order was entered at the SEC's behest, and not prepared by the Receiver. You further cite to CVL's *Memorandum in Support of Proposed Intervenor CVL's Motion to Intervene and to Remove CVL's Assets from the Court-Ordered Freeze* [ECF No. 115-1] for the proposition that the Receiver "subjected both CVL and the Lumberyard" to an asset freeze (something only a court can do) knowing that his assertion that CVL was an affiliate of Essex was "not true". The memorandum you cite contains not a single representation made by or on behalf of the Receiver, having been filed by CVL, an entity then adverse to the Receiver, and whose motion to intervene the Receiver successfully opposed.

Your claim that the Receiver's assertion that CVL is an affiliate of the entities in receivership was "not true" is also meritless. By your own admission, Essex's principal, Ralph Iannelli owned a percentage interest in CVL[1] (incidentally, purchased with funds unlawfully diverted from investors in the Essex Ponzi scheme), which interest was later signed over to the Receiver in accordance with the terms of the Preliminary Injunction. The definition of "affiliate" unequivocally includes "a company effectively controlled by another or associated with others under common ownership or control." *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2002); *see also* Cal. Corp. Code § 150 ("A corporation is an 'affiliate' of … another … if it … is under common control with the other …"). Likewise, your claim that the Receiver "inten[ds] to liquidate the Lumberyard" is inaccurate. The Receiver has never expressed any intent to sell the Lumberyard, although he has repeatedly affirmed his intention to sell the interest in CVL that he presently administers, for the benefit of the receivership estate and its creditors.[2] We invite you to review the Receiver's recent interim reports, wherein he has, among other things specifically limited any identification of receivership estate assets to include the estate's interest in CVL and affirmed his intention to sell the interest (not the Lumberyard) for the benefit of the estate and its creditors. *See, e.g.*, ECF Nos. 295-1, 301-1, 305-1, and 309-1. As Mr. Gally holds no interest in CVL, your assertion that the Receiver is seeking to sell something to which he has no claim is misplaced.[3]

B. Mr. Gally's Claim Has Been Conclusively Adjudicated, In His Favor.

As you note in your correspondence, CVL's purchase of the Lumberyard was financed, in part, via a seller carryback note, issued by Essex to Mr. Gally on or around January 14, 2016 in the principal amount of $1,500,000. Pursuant to the terms of the note, Essex committed to pay $250,000 by January 14, 2017, and the balance by January 14, 2019. Essex paid nearly $500,000 to Mr. Gally in the period before the Receiver's appointment, leaving approximately $1 million unpaid. On December 21, 2021, and after Mr. Gally submitted a claim for payment to the Receiver

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1 Mr. Iannelli's interest in CVL was originally a majority interest.

2 These creditors notably include Mr. Gally.

3 As an aside, your argument that, notwithstanding the interest in CVL that he administers for the benefit of the receivership estate, the Receiver holds no ownership interests in the assets of CVL is likewise unsupported by the law. As you know, the Court's Local Rule 66-8 provides that receiverships are to be administered "as nearly as possible in accordance with the practice in the administration of estates in bankruptcy." A membership is a protected non-economic interest under bankruptcy law and the result here is no different. *In re Altman*, 2018 WL 3133164, at *5 (9th Cir. BAP June 26, 2018) (holding that the contractual right to manage an LLC is a property right pursuant to Cal. Civ. Code § 654); *see also Fursman v. Ulrich (In re First Protection, Inc.)*, 440 B.R. 821, 830 (9th Cir. BAP 2010) (collecting cases). All of the decisions cited in your correspondence relate to the legal distinction between an LLC and its members, which the Receiver does not dispute, or to the rights of a creditor of an LLC (not a member) to engage in the LLC's management, which is not in issue here.

in connection with a Court-approved claims process, the Receiver recommended to the Court that Mr. Gally's claim be allowed in the amount of $1,046,316.44. (*See* ECF No. 220.) Moreover, Mr. Gally was one of only two non-investor creditors of the receivership estate whose claims the Receiver recommended for priority treatment, on par with the claims of defrauded investors. (*Id.*) The Court accepted the Receiver's recommendations, resulting in the allowance of Mr. Gally's claim in the above-identified amount, and its treatment as a priority claim. (*See* ECF No. 234.)

Since the Court's *Order Granting 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* [ECF No. 234], and in accordance with the distribution plan approved by the Court, the Receiver has distributed $176,705.81 to Mr. Gally, in partial satisfaction of his claim. An additional distribution is contemplated.

In other words, Mr. Gally has already submitted to the jurisdiction of the Court by submitting a claim for payment in the Receivership Case. His claim has been adjudicated, in his favor, and he has already begun to receive payments on the claim. It is therefore puzzling that Mr. Gally would insist that he will suffer harm should the asset freeze imposed pursuant to the Preliminary Injunction not be lifted to permit him to commence litigation on the very same claim for payment.[4] By definition, Mr. Gally has already benefitted – and likely stands to benefit further – from the Preliminary Injunction, through which the Court established the receivership estate from which Mr. Gally's claim is being paid.[5]

C. Mr. Gally Is Not Entitled To Intervene In The Receivership Case.

Notwithstanding your arguments to the contrary, Mr. Gally is not entitled to intervene in the Receivership Case. As a preliminary matter, intervention in an enforcement action brought by the SEC is not permissible absent written agreement for the SEC. *See, e.g.*, 15 U.S.C. § 78u(g) ("no action for equitable relief instituted by the [SEC] pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the [SEC], even though such other

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[4] Indeed, it seems likely that Mr. Gally's proposed litigation would be subject to preclusion. Under federal law, the doctrine of *res judicata* applies where an earlier action (1) involved the same claim; (2) was conclusively adjudicated, on the merits; and (3) involved the same parties or parties in privity. *See, e.g.*, *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). California law is no different. *See, e.g., DKN Holdings LLC v. Faerber*, 61 Cal.4th 813, 824 (2015). Mr. Gally's claim here arises from a payment obligation incurred by Essex, which claim has already been conclusively adjudicated in the Receivership Case.

[5] For this reason, equally puzzling is Mr. Gally's assertion that the Receiver's monetization of estate assets will not benefit him. It already has; absent the Receiver's recovery of funds from multiple sources, Mr. Gally would not have received the distributions he has received in connection with his claim.

actions may involve common questions of fact, unless such consolidation is consented to by the [SEC]"); *SEC v. Egan*, 821 F. Supp. 1274, 1275-76 (N.D. Ill. 1993) (denying petition to intervene where the "SEC has expressly refused to consent to the proposed third-party compliant on the ground that it 'would complicate the issues, delay th[e] … action and significantly interfere with the Commission's … responsibilities'"); *SEC v. Homa*, 2000 WL 1468726, *2 (N.D. Ill. Sept. 29, 2000) (finding the bar to intervention to be "plain and unambiguous" and citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 N. 17 (1979) (Supreme Court acknowledging that consolidation of a private action with one brought by the SEC is prohibited by statute); *SEC v. Qualified Pensions, Inc.*, 1998 WL 29496, *3 (D. D.C. Jan. 16, 1998) (applying similar standard and further finding that proposed intervenors had failed to make a showing of a right to intervene). Your correspondence is devoid of any detail regarding your efforts to meet and confer with the SEC regarding Mr. Gally's proposed intervention, let alone any written agreement to such intervention.[6]

As to the question of intervention as of right, the Ninth Circuit has generally outlined four requirements for intervention as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2). A proposed intervenor must: (1) timely file an application; (2) possess a 'significantly protectable' interest relating to the property or transaction that is the subject of the action; (3) be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) be inadequately represented by the parties to the action. *California ex rel. Lockyear v. United States.*, 450 F.3d 436, 441 (9th Cir. 2006) (citing *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993)). Failure to satisfy any one of the requirements is fatal to a motion to intervene. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

Timeliness, too, is a threshold question for the purposes of a request to intervene as a matter of right. *See, e.g.*, *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990) (affirming denial of motion to intervene on, among other things, timeliness grounds). In order to determine whether an intervention request is timely, courts consider (1) the stage of the proceeding at which intervention is sought; (2) the risk of prejudice to other parties; and (3) the reason for and length of a movant's delay. *Id.*

Here, Mr. Gally cannot reasonably suggest that a motion to intervene would be timely, nor that his interests are inadequately represented by the very Receiver. First, Mr. Gally has been on notice of the pendency of the receivership for years. As a creditor who registered for notice via the Receiver's website, he has received notice of and had access to all of the relevant pleadings in this matter, in real time – including recent interim reports filed by the Receiver reflecting the fact that the receivership has entered its final stages and the Receiver is in the process of attempting to

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[6] In addition, the Court's Local Rule 7-3 requires counsel for a party to "contact opposing counsel to discuss thoroughly, preferably in person, the substance of [a] contemplated motion and any potential resolution." Meeting and conferring with the SEC is therefore a prerequisite to the filing of any motion in the Receivership Case by Mr. Gally.

complete the disposition or remaining estate assets, make a final distribution to holders of allowed claims (including Mr. Gally), and wind-down the receivership. Any suggestion that an intervention request on the cusp of the wind-down and termination of the receivership is timely[7] would be entirely at odds with the procedural history of this case. An intervention intended to undermine the Receiver's ability to monetize one of the few remaining unliquidated assets of the receivership estate would also be highly prejudicial to the estate, and to the collective interests of the stakeholders the Receiver's appointment was intended to benefit.

Moreover, Mr. Gally cannot legitimately claim that the very Receiver who recommended his claim for allowance as a priority claim, and has already commenced making payments on that claim, does not adequately represent his interests as a creditor. Absent the Receiver's efforts, Mr. Gally would have had no claim, and would not have received any distributions funded by the recoveries the Receiver has pursued for the benefit of all stakeholders, including Mr. Gally. Finally, estate creditors are not entitled to the "absolute satisfaction" Mr. Gally appears to be pursuing here and his dissatisfaction with the existence of a receivership does not give rise to a right to intervene. *SEC v. Am. Pension Servs., Inc.*, 2015 WL 136322, *4 (D. Utah 2015).

D. The Receiver Urges Mr. Gally To Reconsider His Proposed Course Of Action.

As detailed above, Mr. Gally's proposed course of action, as described in your correspondence, appears to be based upon a fundamental misunderstanding of the facts and the law. As the pleadings on file in the Receivership Case amply demonstrate, the Receiver has consistently conducted himself in accordance with the highest professional standards and consistent with his duty as a Court-appointed fiduciary. He has never made any deliberate misrepresentations to the Court, nor has he sought to undermine Mr. Gally's ability to recover what he is owed in connection with the Essex seller carryback note. Indeed; to the contrary, the Receiver has successfully supported Mr. Gally's claim, secured it priority treatment, and commenced making payments on the claim as provided for in the Court-approved distribution plan. Any effort by Mr. Gally to intervene at this point – particularly in an effort to undermine the Receiver's ability to carry out the monetization of one of the few assets remaining in the receivership estate – would be untimely, inconsistent with the legal standard justifying intervention, and highly prejudicial to the receivership estate and its stakeholders, including Mr. Gally himself.

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[7] Your reference to Mr. Gally having previously engaged an attorney (Patrick Bageant) to meet and confer with the Receiver's counsel in December 2023 does not establish timeliness. Mr. Bageant took no action after meeting and conferring with the Receiver in 2023, and Mr. Gally has subsequently disavowed Mr. Bageant's representation of him, claiming never to have authorized Mr. Bageant to represent him.

The Receiver therefore urges Mr. Gally to reconsider, and refrain from pursuing the course of action described in your correspondence. To the extent you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

Joshua A. del Castillo

JAD

cc: Geoff Winkler, Receiver
David R. Zaro, Esq.
(via email only)

EXHIBIT D

UNITED STATES DISTRICT COURT
Central District of California

SECURITIES AND EXCHANGE COMMISSION, Plaintiff
v.
RALPH T. IANNELLI and ESSEX CAPITAL CORPORATION, Defendants.

Case Number 2:18-cv-05008-FMO-AFM

GENERAL INFORMATION

Geoff Winkler, the Receiver in the above-captioned case, has determined that there will likely be some assets to distribute to creditors and investors. The amount of funds available for distribution has not been determined; however, the Receiver believes that the best source of compensation to the investors and creditors is from the funds that the Receiver is bringing into the receivership estate and investors and creditors are strongly encouraged to file claims using the attached form. **If your Proof of Claim is not received before November 30, 2020 at 5:00 p.m. PST, you will be deemed to have accepted and agreed to the Receiver's valuation of your Claim Amount, if applicable. If the Receiver has not identified you as a Claimant and has not transmitted to you a Determination of Claim Amount letter, you will lose your right to receive any distributions from the Receiver or the receivership estate and your claim will be barred, if your Proof of Claim is not received before November 30, 2020.**

1. **WHO MUST FILE A PROOF OF CLAIM FORM?** You must file a Proof of Claim form if you: (1) dispute the Receiver's calculated Claim Amount, as set forth in the Receiver's Determination of Claim Amount letter to you, if applicable; or (2) did not receive a Determination of Claim Amount letter and you otherwise believe that you are owed money by Defendant ESSEX CAPITAL CORPORATION, or any of its subsidiaries and affiliates (collectively, the "Company"), or if you assert a claim against any other person or entity arising out of or based upon: (a) any investment with, through, or in the Company; (b) any interest in the Company or any of its assets or any claim against the Company or any entity under its control based on primary, secondary, direct, indirect, secured, unsecured, or contingent liabilities; or (c) any claim of any sort against the Company or any entity under its control whether such claim is based upon contract, tort, contribution, indemnity, reimbursement, subrogation theories or other legal or equitable theory.. If you are both an investor and creditor, or are an investor with or through more than one of the Companies, you must file a single Proof of Claim form for all claim(s) or interest(s) you allege to have against the Companies, collectively and individually. **Note that a failure to submit a signed Proof of Claim form and supporting documentation, in the event that you dispute the Receiver's calculated Claim Amount or otherwise assert a claim that has not been identified by the Receiver, will result in the denial of your claim.**

2. **CONSENT TO JURISDICTION OF THE COURT AND THE CONSEQUENCES THEREOF**. If you submit a Proof of Claim form in this case, you consent to the jurisdiction of United States District Court for the Central District of California ("District Court") for all purposes, agree to be bound by its decisions, including a determination, among other things, as to the validity and amount of your claim against the Company, or other persons or entities as identified in paragraph 1, above. In submitting a Proof of Claim, you agree to be bound by the actions of the District Court, including the District's Court approval of limiting or denying your claim, if any. By submitting a Proof of Claim, you further agree that your participation in any distribution of the receivership estate may exclude or prevent you from pursuing any other remedies.

3. **WHERE MUST THE PROOF OF CLAIM FORM BE SENT?** The completed Proof of Claim form, along with all supporting documentation, must be mailed to:

Geoff Winkler, Receiver
c/o Essex Capital Corporation Claims
PO Box 4364
Portland, OR 97208-4364

4. **WHAT IS THE DEADLINE TO FILE THIS PROOF OF CLAIM FORM?** The Proof of Claim form must be received by the Receiver before **November 30, 2020 at 5:00 p.m. PST**. Please note that any late filed claim will be objected to and denied in its entirety.

5. **AM I AN INVESTOR OR CREDITOR?** If you believe you have or allege you have loaned the Company money through promissory notes or otherwise invested with, through, or in the Company, you are an investor. If you have performed services for the Company, sold merchandise, loaned money, or were an employee of the Company, you are a creditor. All other Claimants to whom the Company may owe a debt, which debts are not based on the purchase of stocks or other investments, are also creditors. Based on your categorization as either an investor or creditor, fill in the appropriate section of the attached Proof of Claim form. If you believe that you are both an investor and a creditor, you need fill out only one (1) Proof of Claim form. In either case, you must sign the Proof of Claim form at line 8.

6. **SUPPORTING DOCUMENTS.** You must attach to the Proof of Claim form copies of all documents that show that the Company owes the debts or amounts claimed. If supporting documents are not available, you must attach an explanation of why they are not available. Failure to provide such documents may result in the denial of your claim.

7. **ADDITIONAL INFORMATION.** Note that additional information regarding filing the Proof of Claim form, along with additional blank forms, can be obtained at www.essex-receivership.com or you may write to the Receiver at the following address:

Geoff Winkler, Receiver
c/o Essex Capital Corporation Claims
PO Box 4364
Portland, OR 97208-4364

INFORMATION ON COMPLETING THE PROOF OF CLAIM FORM

1. **Information about Claimant.** Complete this section giving the name, address and telephone number of the Claimant to whom the Company allegedly owes money or property, and any account or reference number associated with such alleged debt.

2. **Claimant Type.** Indicate in this box whether you are an investor or creditor (as defined in the General Information section above). If you are both an investor and a creditor, please file a single Proof of Claim form for all claim(s). Upon completing this box, if you have marked investor, please proceed to box 3; if you have marked creditor, please proceed to box 4. If you have marked investor and creditor, please complete boxes 3 and 4.

3. **FOR INVESTORS ONLY.**
   - **3a.** Indicate the name of the entity with, through, or in which you claim to have invested funds.
   - **3b.** **Pending Legal Action**. If you have commenced a legal action against the Company, provide the details of said legal action here. Attach any additional pages of description and supporting documentation. Also, please provide any information regarding court judgments obtained against any of the above-captioned defendants.
   - **3c.** **Claim Amount**. State the amount you invested or paid to the Company as of December 21, 2018. If said claim amount includes amounts over principal invested, such as interest, attorneys fees, damages, claims or late fees, please mark the appropriate box below the claim amount and provide a detailed break-down of the claim. Also attach all documentation supporting said claim amount and the calculation of said claim. Also, if you allege that your claim is subject to a security interest, mark the appropriate box in this section and provide all supporting documentation evidencing the secured status of your claim.
   - **3d.** **Date and Amount of Funds Invested**. Indicate in this section each time you made an investment with the applicable Company by indicating the investment date and the investment amount. Attach additional sheets as necessary to reflect all investments.
   - **3e.** **Date and Amount of any Distributions or Withdrawals**. Indicate the date of any distributions or withdrawals from the applicable Company by indicating the date and amount of each said distribution or withdrawal. Attach additional sheets as necessary to reflect the date and amount of all transfers of money out of the applicable Company. (Investors go to Section 5 of the Proof of Claim and complete Sections 5 – 8.)
   - **3f.** Attach to your Proof of Claim copies of all Agreements, Certificates, and any other documents you contend reflect the terms of your agreement or investment with the Company.

4. **FOR CREDITORS ONLY.**
   - **4a.** Indicate the basis of your claim in this section.
   - **4b.** Company with whom claim was incurred: Identify the Company you believe owes you money.
   - **4c.** **Date the Claim was Incurred**. Indicate the date on which the amount you allege to be owed arose.
   - **4d.** **Pending Legal Action**. If you have commenced a legal action against the Company, provide the details of said legal action here. Attach any additional pages of description and supporting documentation. Also, please provide any information regarding court judgments obtained against any of the above-captioned defendants.
   - **4e.** **Total Claim Amount as of December 21, 2018**. State your claim amount as of December 21, 2018. Also, mark the applicable box if you contend your claim is subject to a security interest, and attach copies of all security agreements and other documents that evidence the claim of secured status. Mark the applicable box if your claim amount includes interest or other charges, such as attorneys fees, loss profits, or late fees in addition to the principal amount of your claim, and attach an itemized statement of all such additional charges.

5. **Supporting Documentation.** Note that in addition to filling out the Proof of Claim form, you must provide supporting documentation evidencing your claim. Supporting documentation may include, but need not be limited to, documents such as cancelled checks, bank statements, account ledgers, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, or evidence of perfection of liens. Furthermore, feel free to provide any additional pages of explanation or narrative discussing your claim and claim amount.

6. **Acknowledgement of Filing.** To receive an acknowledgement of the filing of your Proof of Claim form, enclose an additional copy of the Proof of Claim form, along with a self-addressed, stamped envelope when filing the original form.

7. **Date.** Insert the date on which you completed and signed the Proof of Claim form.

8. **Signature. Sign the Proof of Claim form and indicate your title, if applicable.**

EXHIBIT E

AFS American Fiduciary Services

April 26, 2021

James Gally
14 N. Milpas St
Santa Barbara, CA 93103

Re: Securities and Exchange Commission v. Essex Capital Corporation --- Receiver's Determination of Claim Amount

Dear James Gally,

As you may know, Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for Essex Capital Corporation and its subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities") in the above-referenced Securities and Exchange Commission (the "Commission") enforcement action, pending in the United States District Court for the Central District of California (the "Court") was appointed on December 21, 2018. Pursuant to the Court's Order Regarding Preliminary Injunction and Appointment of a Permanent Receiver (the "Appointment Order") (ECF No. 66), the Receiver was authorized and empowered to, among other things: (1) assume exclusive authority and control over the Entities and their assets; and (2) conduct an investigation and accounting of the Entities' assets and financial activities.[1]

Pursuant to his duties under the Appointment Order, as reaffirmed by the Permanent Injunction, the Receiver has completed his investigation and accounting of the business and financial activities of the Receivership Entities, including a net money-in/money-out ("MIMO") accounting of their financial transactions, with a particular emphasis on those transactions reflecting funds raised from and paid out to investors in, and creditors of, the Receivership Entities. As a result of the Receiver's investigation and accounting efforts, he has identified at least 156 Entity investors and non-investor creditors who appear to have suffered net losses from their investments in, or contributions to, the Entities in the aggregate amount of approximately $40 million.

Having completed his investigation and accounting of the business and financial activities of the Receivership Entities, the Receiver submitted a Stipulation for Order: (1) Establishing Claims Procedures; and (2) Setting Claims Bar Date (the "Claims Stipulation") (ECF No. 168), in consultation with the Commission, in order to establish procedures for noticing, reviewing, and processing claims against the Receivership Entities. On July 31, 2020, the Court entered its Order granting the Claims Stipulation (the "Claims Order") (ECF No. 179).

[1] On September 9, 2019, the Court entered its Order Regarding Permanent Injunction (the "Permanent Injunction") (ECF No. 113), which reaffirmed the authority initially conveyed upon the Receiver via the Appointment Order.

715 NW Hoyt Street #4364
Portland, Oregon 97208
www.americanfiduciaryservices.com

AFS American Fiduciary Services

Based upon the Receiver's investigation and accounting, and pursuant to the Claims Stipulation, he has identified you as a prospective claimant against the Receivership Entities. The Receiver recognizes and does not dispute that as of April 26, 2021, you are owed $1,046,316.44, pursuant to your Promissory Note. As reflected below, the Receiver acknowledgement and agreement with regard to the foregoing obligations is independent of the formulation of the plan for distribution which involves separate claim payment calculations.

Solely for the purpose of calculating the first interim payment under the Receiver's distribution plan, the Receiver is allowing your claim in the amount of $1,046,316.44 (the "Claim Amount"). The Claim Amount simply represents the Receiver's MIMO calculation of your aggregate claim for reimbursement against the Receivership Entities, i.e., your aggregate MIMO net loss from your investment(s) in and/or contribution(s) to the Entities, as reflected in the Receiver's records.[2] For avoidance of doubt, the Claim Amount reflects the Court approved MIMO calculation of your claim. The details of the Receiver's determination are included as Exhibit A. If these amounts are consistent with your records, please check the box in the affirmative and sign on the next page.

If you dispute the Receiver's calculated Claim Amount, you must submit a completed Claim Form, attached hereto as Exhibit B, to the Receiver, by November 30, 2020 (the "Claims Bar Date"). If additional documentation is necessary, the Receiver will request specific information. It is not necessary to send additional documentation with your Claim Form. If you do not return a completed Claim Form to the Receiver on or before the Claims Bar Date, you will be deemed to have accepted and agreed to the Receiver's valuation of your Claim Amount, associated with your claim against the Receivership Entities. A copy of the Claim Form, along with information about the instant receivership, including the claims procedures discussed herein, is available on the Receiver's website for this matter, www.essex-receivership.com.

Finally, the Receiver has included a contact form as Exhibit C, which will allow claimants to update their contact information and provide information necessary to process your claim. This form must be completed by all claimants unless you disagree with the Receiver's determination of your claim and you will be filing a proof of claim.

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[2] In accordance with the Claims Order, the Claim Amount does not, and shall not, include accrued interest, late fees, contract or other damages, attorneys' fees, or similar contingent, consequential, or unliquidated damages.

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☒ **I agree with the Receiver's determination of my claim in the amount of $1,046,316.44. I have signed below acknowledging my agreement and completed the claimant contact form (Exhibit C).**

By signing your name below, you are certifying that the information contained in this Receiver's Determination of Claim Amount and any back-up documentation provided is true and correct under penalty of perjury under the laws of the United States.

Signature: Name: Title: James M Galley

Signature: Name: Title:

Dated this day of_,_. 04/28/2021

☐ **I disagree with the Receiver's determination of my claim in the amount of $1,046,316.44. I have completed and signed the Proof of Claim Form (Exhibit B).**

Please check the appropriate box above, complete the appropriate exhibits (Exhibit B or C), make a copy of all documents for your records, and send the original documents to:

Geoff Winkler, Receiver
c/o Essex Capital Corporation Claims
PO Box 4364
Portland, OR 97208-4364

American Fiduciary Services

Please do not hesitate to contact the Receiver should you have any questions or wish to discuss the foregoing. Our phone number is (855) 880-0100 or you can email us at john@americanfiduciaryservices.com.

Sincerely,

Essex Capital Corporation Claims Team

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715 NW Hoyt Street #4364
Portland, Oregon 97208
www.americanfiduciaryservices.com